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

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

SECOND ORDER AND REQUEST FOR FURTHER COMMENT

Adopted: November 13, 2009 **Released: November 16, 2009**

Comment Date: December 7, 2009
Reply Comment Date: December 21, 2009

By the Chief, International Bureau:

I. INTRODUCTION

1. In this Order, we extend our June 15, 2009 *Tonga Stop Payment Order* on the U.S.-Tonga route to all U.S. carrier payments for termination services to Digicel Tonga Limited (Digicel).[1] In doing so, we find that Digicel has raised its termination rates to the same level and during the same timeframe as Tonga Communications Corporation (TCC), thereby preventing competitive bypass of unreasonably high rates mandated by the Tonga government.[2] Accordingly, we extend the stop payment order to U.S. carriers exchanging traffic to Tonga with Digicel and order all U.S. carriers with

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[1] *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 (IB 2009) (*Tonga Stop Payment Order*). TCC filed an application for review of the *Tonga Stop Payment Order*. *Petition of AT&T Inc. for Settlements Stop Payment Order on the U.S.-Tonga Route*, TCC Application for Review, IB Docket No. 09-10 (filed July 15, 2009). AT&T and Verizon filed oppositions to TCC's Application for Review. *Petition of AT&T Inc. for Settlements Stop Payment Order on the U.S.-Tonga Route*, AT&T Opposition to Application for Review, IB Docket No. 09-10 (filed July 30, 2009); *Petition of AT&T Inc. for Settlements Stop Payment Order on the U.S.-Tonga Route*, Verizon Opposition to Application for Review, IB Docket No. 09-10 (filed July 31, 2009).

[2] *See International Settlements Policy Reform: International Settlement Rates*, IB Docket Nos. 02-234 and 96-21, First Report and Order, 19 FCC Rcd 5709 (2004) (*2004 ISP Reform Order*). *See also 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 on Review, 19 FCC Rcd 9993 (2004) (*Philippines Order on Review*); *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, 3525-26, ¶ 10 (IB 2003) (*Philippines Order*); *AT&T Corp. Proposed Extension of Accounting Rate Agreement for Switched Voice Service with Argentina*, Order, 11 FCC Rcd 18014, 18014, ¶ 1 (1996) (*Argentina Order*) ("The Commission will not allow foreign monopolists to undermine U.S. law, injure U.S. carriers or disadvantage U.S. consumers."); *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."). *See also Cable & Wireless v. FCC*, 166 F.3d 1224, 1226 (D.C. Cir. 1999) ("The FCC has long sought to protect U.S. carriers and U.S. consumers from the monopoly power wielded by foreign telephone companies in the international telecommunications market.").

Commission authorizations permitting the provision of facilities-based international switched voice services on the U.S.-Tonga route to suspend immediately all payments for termination services to Digicel. In addition, we seek further comment on whether we should take additional action to reduce the unreasonably high termination rates on the U.S.-Tonga route. Specifically, we seek comment on AT&T's proposal that we should undertake enforcement of the Commission benchmark rate of $0.19 for all U.S.-Tonga traffic sent on both direct and indirect routes to Tonga.

II. BACKGROUND

2. In our initial *Tonga Stop Payment Order*,[3] we found that actions taken by TCC to disrupt the U.S.-international networks of AT&T Inc. (AT&T) and Verizon Communications, Inc. (Verizon), for the purpose of trying to force those carriers to agree to higher termination rates, were anticompetitive and required action to protect U.S. consumers in accordance with Commission policy and precedent. Specifically, we found that TCC's actions in 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 for their failure to accede to those increases was anticompetitive. We further found that TCC had not presented persuasive arguments as to why its actions should not be considered anticompetitive under Commission policy and precedent and thus had not overcome the rebuttable presumption that its actions harm the U.S. public interest. We noted that while TCC's actions may have been required by action of the Tonga Communications Minister mandating the rate increase, they do not have any less anticompetitive effect on U.S. carriers or consumers.[4] And, notwithstanding action by the Tonga Communications Minister, we found that the Commission has the authority to issue a stop-payment order to U.S. carriers to protect U.S. consumers from anticompetitive behavior pending restoration of circuits and resumption of commercial negotiations between TCC and AT&T and Verizon.[5] To date, AT&T's and Verizon's circuits remain down.[6]

3. In the *Tonga Stop Payment Order*, we requested further comment on whether we should extend the stop payment order to any U.S. carrier with direct arrangements with Digicel for international termination services in Tonga. Digicel is the other carrier licensed in Tonga to provide telecommunications services.[7] AT&T filed comments supporting extension of the stop payment order to U.S. carrier payments to Digicel and also proposing enforcement of the Commission benchmark policy on the U.S.-Tonga route.[8] On July 23, 2009, Verizon and TCC filed reply comments.[9] Verizon supported extension of the stop payment order to U.S. carrier payments to Digicel. In its reply, TCC argued that the Bureau erred in issuing the *Tonga Stop Payment Order* and that the order should not be further extended by adopting AT&T's benchmark enforcement proposal.

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

[4] *Id.* at 8013-14, ¶ 22.

[5] *Id.* at 8014, ¶ 23.

[6] *Petition of AT&T Inc. for Settlements Stop Payment Order on the U.S.-Tonga Route*, Order and Request for Further Comment, IB Docket No. 09-10, DA 09-1325, AT&T Status Report (filed November 12, 2009); *Petition of AT&T Inc. for Settlements Stop Payment Order on the U.S.-Tonga Route*, Order and Request for Further Comment, IB Docket No. 09-10, DA 09-1325, Verizon Status Report (filed November 12, 2009).

[7] *Tonga Stop Payment Order*, 24 FCC Rcd at 8007, ¶ 3.

[8] AT&T Comments, IB Docket No. 09-10 (filed July 8, 2009).

[9] TCC Reply, IB Docket No. 09-10 (filed July 23, 2009); Verizon Reply, IB Docket No. 09-10 (filed July 28, 2009).

III. DISCUSSION

A. Application to Digicel Tonga Limited

4. In our *Tonga Stop Payment Order*, we noted that the Tonga Communications Minister's order for the increased rate applies to both TCC and Digicel.[10] We further noted that some U.S. carriers with direct operating arrangements with Digicel apparently are paying the $0.30 rate to Digicel.[11] We therefore sought comment on whether we should extend our stop payment order to U.S. carriers with direct arrangements with Digieel for termination of traffic on the U.S.-Tonga route.

5. The Commission has the authority to extend the *Tonga Stop Payment Order* to U.S. carrier payments to Digicel. As AT&T notes, the Commission previously has "affirmed that its 'policies regarding foreign market power apply' where 'multiple carriers in a foreign market . . . act pursuant to anticompetitive government mandates,' even though those carriers may otherwise lack market power."[12] Digicel did not file comments with the Commission and there is nothing in the record to suggest that the $0.30 rate increase reflects Digicel's costs. And, as noted in our *Tonga Stop Payment Order*, the U.S. Trade Representative's (USTR's) Section 1377 review found that, "[b]y imposing a uniform termination rate of 30 cents, the Tongan government eliminated the price competition that had previously existed between TCC and Digicel. It raised the termination rate both well above the FCC's benchmark and far in excess of the rate that had prevailed in a competitive market, which provided a more accurate reflection of the costs of providing service."[13] We agree with AT&T that, as a result, Digicel no longer sets inbound termination rates independently, and reinforces TCC's control of the foreign end of the U.S.-Tonga market by preventing "bypass of the unreasonably high rate imposed" by TCC.[14] In addition, Verizon points out that it "competes with other U.S. carriers who terminate traffic to Digicel," and "these carriers are thereby benefitting unfairly from Digicel's exclusion from the Commission's order."[15]

6. We find that extension of the stop payment order to U.S. carriers having direct operating arrangements with Digicel is necessary here to promote a unified U.S. bargaining position that will enable

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[10] *See Tonga Stop Payment Order*, 24 FCC Rcd at 8021, ¶ 46.

[11] *Id. See also Id.* at 8009, ¶ 9, n.29. The Bureau sent information requests to carriers that, according to the most recent information filed with the Commission, serve the U.S.-Tonga route other than the petitioner, AT&T. Those carriers were: MCI International, Sprint Nextel Corporation, Bharti Airtel Limited, France Telecom Long Distance USA, LLC, IDT Corporation, IT&E Overseas, Inc., KDDI America, Inc., KPN International Network Services, Inc., New Century InfoComm Teeh Co. Ltd., Primus Telecommunications, Inc., REACH Services (USA) Inc., Telecom New Zealand, USA, Inc., and TeliaSonera AB. The information request asked for information concerning: whether the carrier provides facilities-based service on the route; whether the carrier had direct circuits to Tonga; whether any direct circuits on the route were disrupted; and whether the carrier provided service on the route through alternative operating arrangements.

[12] *See* AT&T Comments at 3 (*citing 2004 ISP Reform Order* and *1998 Biennial Regulatory Review, Reform of the International Settlements Policy and Associated Filing Requirements*, 14 FCC Rcd 7963, ¶ 30 (1999) (affirming that "the Commission may be required to take appropriate remedial action" where "a foreign carrier that otherwise would appear to lack market power might possess some ability unilaterally to set rates for terminating U.S. traffic due to government policies."). *See also Philippines Order*, 18 FCC Rcd 3519 at ¶ 12 (finding that five Philippine carriers engaged in concerted action to whipsaw U.S. carriers into the same rate increase); *Philippines Order on Review*, 19 FCC Rcd 9993. Most of the carriers responded that they provide service to Tonga on an indirect basis while some said that they provide service on a direct basis through an operating agreement.

[13] *Tonga Stop Payment Order*, 24 FCC Rcd at 8009-10, ¶ 10 (*citing* Results of the 2009 Section 1377 Review of Telecommunications Trade Agreements (1377 Report) at 7, n.4).

[14] AT&T Comments at 3.

[15] Verizon Reply at 2.

resolution of this matter and also to discourage other situations in which foreign carriers impose unreasonably high termination rates under threat of circuit disruption.[16] In this order, we require 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 payments to Digicel for switched voice traffic. This suspension shall remain in effect pending full restoration of AT&T and Verizon's circuits or otherwise ordered by the Commission.

7. Finally, we reject TCC's argument that the rate increase is not anticompetitive due to the fact that it was required by mandate of the Tonga Communications Minister. We previously fully addressed TCC's arguments to this regard in the *Tonga Stop Payment Order*.[17]

B. Enforcement of the Benchmark Rate on the U.S.-Tonga Route

8. In our *Tonga Stop Payment Order*, we noted that there are U.S. carriers that have alternative arrangements with third parties (*i.e.*, not TCC or Digicel) to provide service on the U.S.-Tonga route. Such arrangements involve re-originating U.S. traffic to Tonga through a third country. In responding to the request for comments in the *Tonga Stop Payment Order*, AT&T proposes that the Commission enforce the $0.19 benchmark rate for all traffic on the U.S.-Tonga route. Specifically, AT&T requests that the Commission "take additional measures to require the reduction of rates to more reasonable levels on this route by issuing an order, effective immediately, requiring U.S. carriers to pay no more than the $0.19 benchmark rate for all U.S.-Tonga traffic."[18] AT&T's proposal would include third country re-origination traffic. TCC argues against enforcing benchmarks on the route.[19]

9. We stated in our *Tonga Stop Payment Order* that this type of remedy may be considered in a separate proceeding if AT&T and Verizon circuits remain disrupted. In light of the fact that AT&T's and Verizon's circuits remain down,[20] we request comment on AT&T's proposal, taking into account the reply comments received from TCC.[21] We specifically request comment on enforcing the $0.19 benchmark rate on third party re-origination traffic as well as traffic exchanged pursuant to an operating agreement. We also seek comment on the appropriate proceeding to consider this issue further should the Commission decide to do so.[22]

C. Conclusion

10. We order all U.S. carriers to suspend immediately all U.S. carrier payments for termination services to Digicel as specified above. The suspension shall remain in effect pending full

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[16] *See* AT&T Comments at 2 and Verizon Reply at 2.

[17] *See Tonga Stop Payment Order*, 24 FCC Rcd 8013-16 at ¶¶ 20-27.

[18] AT&T Comments at 3-6.

[19] *See, generally*, TCC Reply.

[20] *Petition of AT&T Inc. for Settlements Stop Payment Order on the U.S.-Tonga Route*, Order and Request for Further Comment, IB Docket No. 09-10, DA 09-1325, AT&T Status Report (filed November 12, 2009); *Petition of AT&T Inc. for Settlements Stop Payment Order on the U.S.-Tonga Route*, Order and Request for Further Comment, IB Docket No. 09-10, DA 09-1325, Verizon Status Report (filed November 12, 2009).

[21] In its reply comments, TCC states that we asked for comment on AT&T's proposal in our *Tonga Stop Payment Order*. TCC Reply at 1. In fact, we only requested comments on extension of our stop payment order to Digicel. *See Tonga Stop Payment Order*, 24 FCC Rcd at 8021-22, ¶¶ 46-47.

[22] *See* Letter from Jacquelynn Ruff, Vice President, International Public Policy & Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 09-10, DA 09-1325, (filed August 27, 2009).

restoration of AT&T's and Verizon's circuits and services, and in accordance with the Commission determinations following this Order. Furthermore, we seek comment on AT&T's proposal that we enforce the benchmark rate on all U.S.-Tonga traffic.

IV. ADMINISTRATIVE MATTERS

A. Ex Parte Rules

11. This proceeding will be governed by permit-but-disclose *ex parte* procedures that are applicable to non-restricted proceedings under section 1.1206 of the Commission's rules.[23] We direct parties making oral *ex parte* presentations to the Commission's statement re-emphasizing the public's responsibility in permit-but-disclose proceedings and are reminded that memoranda summarizing the presentation must contain the presentation's substance and not merely list the subjects discussed.[24] More than a one- or two-sentence description of the views and arguments presented is generally required.[25] Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well.[26] We urge parties to use the Electronic Comment Filing System (ECFS) to file *ex parte* submissions.[27]

B. Comment Filing Procedures

12. Interested parties must file comments no later than **December 7, 2009**. Replies to such comments must be filed no later than **December 21, 2009**. All filings concerning the Request for Further Comment should refer to **DA 09-2422, IB Docket No. 09-10**.

13. Under the Commission's procedures for the submission of filings and other documents,[28] submissions in this matter may be filed electronically (*i.e.*, though ECFS) or by hand delivery to the Commission's Massachusetts Avenue location.

- Electronic Filers:[29] Comments may be filed electronically using the Internet by accessing the ECFS: http://www.fcc.gov/cgb/ecfs/. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number. Parties also may submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing.

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[23] *Id.* § 1.1206.

[24] *See* Commission Emphasizes the Public's Responsibilities in Permit-But-Disclose Proceedings, Public Notice, 15 FCC Rcd 19945 (2000).

[25] *See* 47 C.F.R. § 1.1206(b)(2) (2007).

[26] *Id.* § 1.1206(b).

[27] *See* discussion *infra* Part VI.

[28] *See Implementation of Interim Electronic Filing Procedures for Certain Commission Filings*, Order, 16 FCC Rcd 21483 (2001); *see also FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence*, Public Notice, 16 FCC Rcd 22165 (2001); *Reminder: Filing Locations for Paper Documents and Instructions for Mailing Electronic Media*, Public Notice, 18 FCC Rcd 16705 (2003).

[29] *See Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554.

14. In addition, one copy of each pleading must be delivered electronically, by e-mail or facsimile, or if delivered as paper copy, by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings), to the Commission's duplicating contractor, Best Copy and Printing, Inc., at fcc@bcpiweb.com or (202) 488-5563 (facsimile).

15. Additionally, filers may deliver courtesy copies by email or facsimile to the following Commission staff:

(1) James Ball, Chief, Policy Division, International Bureau, at James.Ball@fcc.gov or (202) 418-2824 (facsimile);

(2) David Krech, Associate Chief, Policy Division, International Bureau, at David.Krech@fcc.gov or (202) 418-2824 (facsimile);

(3) Kimberly Cook, Policy Division, International Bureau, at Kimberly.Cook@fcc.gov or (202) 418-2824 (facsimile);

(4) Emily Talaga, Strategic Analysis & Negotiations Division, International Bureau, at Emily.Talaga@fcc.gov or (202) 418-0398 (facsimile).

16. Copies of this Order and Request for Further Comment and any subsequently-filed documents in this matter may be obtained from Best Copy and Printing, Inc., in person at 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, via telephone at (202) 488-5300, via facsimile at (202) 488-5563, or via e-mail at fcc@bcpiweb.com. The Order and Request for Further Comment and any associated documents are also available for public inspection and copying during normal reference room hours at the following Commission office: FCC Reference Information Center, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. The Order and Request for Further Comment and any subsequently-filed documents in this matter are also available electronically through the Commission's ECFS, which may be accessed on the Commission's Internet website at http://www.fcc.gov.

17. People with Disabilities: To request materials in accessible formats (computer diskette, large print, audio recording, and Braille) send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

18. For further information, contact James Ball, Policy Division, International Bureau, or David Krech, Policy Division, International Bureau, at 202-418-1460.

V. ORDERING CLAUSES

19. Accordingly, IT IS ORDERED that all facilities-based carriers subject to Commission jurisdiction having an operating agreement with Digicel Tonga Limited for direct termination of U.S. traffic on the U.S.-Tonga route SHALL SUSPEND all termination payments to Digicel for switched voice service effective upon release of this 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 or otherwise ordered by the Commission;

20. This Order is issued pursuant to Sections 1, 2, 4(i)-(j), 5, 201-205, 211, 214, and 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, 63.16, 64.1001 and 1.115 of the Commission's rules, 47 C.F.R. §§ 0.51, 0.261, 43.51, 63.14, 63.16, 64.1001, 1.115, and is EFFECTIVE UPON RELEASE.

FEDERAL COMMUNICATIONS COMMISSION

Mindel De La Torre
Chief, International Bureau