

I. Introduction

MCI WorldCom Asia Pte Ltd. (“WorldCom”) appreciates the opportunity to comment in this proceeding. Our recommendations and observations are based on our experiences in Asia and around the world. WorldCom is a global leader in the provision of data, Internet and voice services, headquartered in the United States and operating in over 65 countries across Asia, Europe, Latin America, and Africa.

In Asia, WorldCom operates services in over 11 countries, with fibre optic networks deployed in Japan, Australia, and Singapore. WorldCom’s focus in Asia is the provision of voice, data and Internet-based services including Frame Relay, ATM, IP-VPNs, Internet Access and webhosting to a broad range of customers.

WorldCom’s business strategy in Asia and around the world is to operate local networks, connecting to WorldCom’s own global network, in order to provide customers with a seamless “local-global-local” solution. WorldCom has built an extensive network in the U.S. and in Europe since liberalisation. In Asia, WorldCom’s expansion is more recent and clearly tied to liberalisation. Since Singapore’s full liberalisation, WorldCom has deployed a metropolitan fibre optic network, physically interconnected with SingTel for the provision of voice service, and launched a full set of data, and Internet services. Most recently, WorldCom launched its IDD services and now offers some the most cost-efficient calling rates in Singapore.

II. Liberalisation is Key to Fostering Innovation and Development in International Telecommunications

Increased competition and liberalisation has produced considerable results worldwide. As noted in Telegeography 2002, “the influence of competition is underscored by the fact that traffic

growth in countries that allow competition has been twice as fast as in countries that do not.”¹

The results of liberalisation worldwide also have enabled the development and deployment of new technologies, such as IP-based services and the Internet.

A. WorldCom recognises that competition on international routes has grown significantly over recent years.

Due to increased competition and availability of international telecommunications services, average prices for consumers worldwide are falling, as the volume of calls and capacity are increasing.² Increased competition can be attributed to several changes in the international marketplace, including the World Trade Organization Agreement on Basic Telecoms and the falling price of international interconnection (i.e., international settlement rates). For example, data shows that the average International Simple Resale (“ISR”) termination rate on US-Asia routes is 0.05 USD.³

As administrations throughout the world have liberalised their telecom markets, there has been a continuing downward trend in international settlement rates. The goal of this trend should be to bring the rates for terminating international calls as close as possible to cost, thus reducing IDD rates for consumers in Singapore and around the world. WorldCom believes that markets that foster effective competition deliver quality, choice and low prices for carriers and consumers alike. We note, however, that an accounting rate regime that reflects current market realities is a critical step in promoting competition. Regulatory policies that support new entrants, while

¹ See Telegeography 2002, p. 60.

² The average price for US consumers fell by 31% between 1996 and 1999.

³ Source: FCC. International Simple Resale (“ISR”) allows US carriers to use private lines to send traffic to international points and to negotiate commercial agreements with all carriers on that route. Unlike arrangements that are subject to the FCC’s International Settlements Policy (“ISP”)(discussed infra at p.11), ISR rates may be asymmetric in nature and contain specific traffic volume commitments.

reducing monopoly carriers's ability to charge above-cost rates are but a few of the pro-competitive principles that iDA should consider in its ongoing liberalisation efforts.

III. Are One-way Bypass and Whipsawing Still Serious Concerns at this Point in Time?

The current international accounting rate system was created as part of a traditional regulatory system in which international telecommunications services were provided through a bilateral correspondent relationship between national monopoly carriers.

A. The threat of whipsawing

Whipsawing can occur when a dominant foreign carrier exercises its market power over competitive carriers in the home market in order to force those carriers to accept accounting rate agreements with unfavorable terms and conditions. Foreign carriers generally cannot whipsaw if they lack market power at the foreign end of the route because the home country operator can respond by entering into an agreement with a different foreign carrier on that route⁴. In sum, foreign carriers that lack market power in a relevant destination market lack sufficient market power to affect competition adversely in Singapore.

Singapore's current regulatory measures seek to deal with the threat of whipsawing by classifying international destinations as either Category I or Category II. Category I destinations are deemed to be fully liberalized with respect to the provision of international facilities and services. Category II destinations are those where a monopoly carrier exists on the foreign end, or where there is limited deregulation in such services. Agreements between Singapore carriers

⁴ See OFTEL's International Controls in PTO Licenses, Consultative Document (May 2000)(OFTEL Consultative Document), at para 1.4; *see also* 1998 Biennial Regulatory Reform of the International Settlements Policy and Associated Filing Requirements, Report and Order and Order on Reconsideration, 14 FCC Rcd 7963 (eff. July 29, 1999) (ISP Reform Order), at para. 22.

and carriers in Category II destinations are subject to proportionate return and parallel accounting measures. These protective measures are designed to protect against anticompetitive practices from monopoly carriers who can use their market power to gain conditions that are favorable to them. WorldCom believes that the threat of whipsawing from the dominant carriers of Category II countries still remains, and in this regard, the iDA's current framework is necessary to protect the interests of Singapore carriers.

WorldCom believes, however, that application of these measures to emerging carriers who lack market power in the same manner in which they are applied to carriers with market power is detrimental to those emerging carriers in Singapore, such as WorldCom. WorldCom's status as an emerging carrier that lacks market power is not taken into consideration, rather, it is treated the same as all carriers in Singapore (even the incumbent), regardless of whether its foreign correspondent is an emerging or monopoly carrier. This inability to differentiate between types of carriers threatens the very competitive environment that Singapore has sought to achieve.

1. In order to effectively analyse the threat of whipsawing, it is important to evaluate carriers's market power in their respective markets.

a. Evaluation of the carrier's market power in the foreign market

WorldCom supports an approach where market power is based on a presumption that a foreign carrier lacks market power when it possesses less than 50 percent market share in each of the relevant foreign markets. A carrier that possesses 50 percent or more market share is considered "dominant", while a carrier that possesses less than 50 percent market share is considered "non-dominant".

WorldCom believes that Singapore carriers should have an equal bargaining position when negotiating with a foreign carrier. This is especially important where the foreign carrier

can unilaterally set the terms and conditions for terminating traffic in the foreign market. In contrast, where the foreign carrier lacks this unilateral power, it is not necessary to maintain accounting rate safeguards, as they could hinder competition among Singapore carriers. WorldCom believes that if a carrier is non-dominant on the foreign end, then the agreements between them should not be subject to regulation, including parallel accounting rates and proportionate return requirements.

WorldCom supports the conclusion that where the carrier in the foreign market lacks market power, its ability to whipsaw carriers in the home country is substantially diminished, if not eliminated.⁵ WorldCom recommends that iDA adopt this conclusion and remove accounting rate safeguards for agreements between Singapore carriers and foreign carriers that hold less than 50% market share on the foreign end.

b. Evaluation of the carrier's market power in the home market

It also is necessary to examine a carrier's dominant or monopoly status in the home market. A carrier lacking market power in its home market has little or no opportunity to dominate the market or to behave anti-competitively. As a result, there is little or no chance that an emerging carrier can whipsaw the other carriers in the home market.

In its *International Non-dominance Order*, the FCC declared then-dominant carrier, AT&T, to be non-dominant.⁶ The FCC noted that there are aspects of dominant carrier regulation that may hinder competition if they are applied to a carrier that does not have market power.⁷ For example, an emerging carrier, like WorldCom, does not control any international

⁵ See *ISP Reform Order*, at para. 22.

⁶ *In the Matter of Motion of AT&T Corp. to be Declared Non-Dominant for International Service*, 11 FCC Rcd. 17,963 (May 14, 1996).

⁷ *Id* at para. 8.

bottleneck facilities, and thus, has no ability to whipsaw. To impose dominant carrier regulations to a carrier that clearly lacks market power would frustrate its ability to compete with incumbent carriers, as well as to compete in markets that have been deemed liberalised.

c. Lack of market power on either end of the international route

Recent history has shown us that opening both ends of an international route provides competing carriers with options to negotiate commercial arrangements, either via facilities or resale, and the option of claiming proportionate return – or even self-correspondence – if they choose to do so. WorldCom believes that if **either** the foreign carrier or the home carrier lacks market power, then the agreements between them should not be subject to regulation.

IV. How Effective or Ineffective are the Parallel Accounting Rate and Proportionate Return Measures in Addressing the Problem of One-way Bypass and Whipsawing?

A. Regulations should be designed to protect carriers in the home market, while encouraging pro-competitive behaviour

Similar to regulations in the United Kingdom, Hong Kong, and the United States, Singapore's regulations should address competitive concerns in the foreign market. The purpose of any parallel accounting rate or proportionate return system is to prevent a dominant foreign carrier from obtaining more favorable agreements than its competitors in the international market. The United Kingdom and the US have emphasized this principle in recent proceedings.⁸ WorldCom agrees that any regulatory measures should be designed to protect the home country operator from potentially anticompetitive conduct of foreign operators with market power.

WorldCom recommends that accounting rate conditions could be revised to provide iDA with authority to require proportionate return only in certain instances where

⁸ See OFTEL Consultative Document at para. 1.6.; *see also* ISP Reform Order, at para 9.

anticompetitive behaviour is a genuine risk. Such an arrangement could be similar to the FCC's rule that proportionate return would apply only for settlement arrangements with foreign carriers possessing market power in non-competitive markets. WorldCom recommends that there should be a point at which dominant carriers are not subject to regulation on "competitive" routes. For example, proportionate return should not apply where rates are cost-oriented, even if a dominant carrier is present. iDA's current classification of Category I and Category II destinations generally follows this practice, although its list of Category II destinations contains countries that are deemed liberalized by other regulators.

B. iDA's current accounting rate measures may have negative effects on Singapore's international carriers

Despite iDA's measures to protect Singapore operators that are licensed to provide international services, the current parallel accounting rate and proportionate return conditions may have detrimental effects on a carrier's freedom to negotiate volume deals with foreign carriers, prolonging the existence of the accounting rate regime, and deterring entry into the international telecom market. WorldCom believes that maintaining such regulations could reduce incentives for Singapore carriers to negotiate low settlement rates that competing carriers pay for the termination of foreign traffic. In sum, parallel accounting rates and proportionate return conditions can distort competition in the market.

Proportionate return also is an obstacle to new entrants on both ends of the international route where it applies.⁹ WorldCom believes that the same is true for Singapore. New entrants in

⁹ See ISP Reform Order, at para. 26.

Singapore that have a small amount of Singapore outbound traffic automatically face a higher cost structure than established carriers that have a significant outbound volumes. In most cases, foreign carriers will not send return traffic to a Singapore carrier until the Singapore carrier's outbound traffic volume reaches a specific threshold. Consequently, a new entrant with little outbound traffic will not receive any return traffic to offset the payments it makes for outbound traffic. In addition, Singapore carriers have little incentive to enter into arrangements with new entrants in foreign markets that have little Singapore inbound traffic to offer in return.

WorldCom believes, therefore, that the current accounting rate measures do more harm than good.

V. How Different Countries have Addressed their Accounting Rate Regulations in the New Era of Competition

WorldCom recommends that iDA should consider regulatory measures taken in other countries in evaluating its own accounting rate regulations. Regulations in Hong Kong, the United Kingdom, and the United States have undergone considerable change in recognition of increased competition and liberalisation in the international telecommunications market.

A. Hong Kong

The Office of Telecommunications Authority (OFTA) maintains a list of Category A and Category B routes based on whether effective competition can take place on those routes.

Category A routes include those with "genuine competition at a wholesale level," while Category

B routes are those “reliant on a single external gateway operated by PCCW-HKT (now operated by Reach Networks).”¹⁰

In assessing whether effective competition can take place on individual routes, OFTA considers whether effective competition has actually taken place or can potentially take place. In order to ensure that the route categorisation does not lag behind market reality, OFTA created an “observation list” under Category B to identify potentially competitive routes. Traffic routes on the “observation list” are subject to a fast track review for reclassifying into Category A when effective price competition is firmly established.¹¹

It is important to note that OFTA does not pre-suppose that a route is anti-competitive. By creating an “observation list” that allows fast-track re-categorisation into Category A, OFTA acknowledges that the marketplace is changing rapidly and has crafted its regulations to accommodate this reality. As a result, OFTA’s regulations effective and efficient in promoting competition.

B. United Kingdom

In November 2000, the United Kingdom’s Office of Telecommunications (OFTEL) issued its “Statement on International Controls in PTO Licenses”, the goal of which was to reduce regulation in the “increasingly competitive international telecommunications market.”¹² Among several conclusions, OFTEL determined that reducing unnecessary regulatory burdens on operators with international businesses would promote competition in the international

¹⁰ See Application for Declaration of Non-Dominance in the Retail External Call Services Markets for Category B Observation List Routes for PCCW-HKT Limited, Statement of the Telecommunications Authority, Hong Kong (10 August 2001).

¹¹ See Local Access Charge and Modified Delivery Fee Arrangements, Statement of the Telecommunications Authority, Hong Kong (25 November 1998).

¹² See OFTEL Consultative Document, at S.1.

market. OFTEL determined that it was necessary to retain certain powers to take action against anti-competitive behaviour. This included retention of proportionate return conditions that would allow it to prevent anti-competitive behaviour, such as one-way bypass and whipsawing by **dominant** overseas operators. This regulatory authority is similar to that retained by the FCC in the U.S.

C. United States

1. *ISP Reform Order*

The Federal Communications Commission (FCC) has modified its policies in response to rapidly changing conditions in the international telecommunications market. In May 1999, the FCC's *ISP Reform Order*¹³ significantly altered the environment for agreements with non-dominant carriers. Prior to the ISP Reform Order, all carriers were subject to the Commission's International Settlements Policy (ISP) which requires: (1) the equal division of the accounting rate between the U.S. and foreign carrier; (2) nondiscriminatory treatment of U.S. carriers (all U.S. carriers must receive the same accounting rate, with the same effective date); and (3) proportionate return of inbound traffic.¹⁴

In its ISP Reform Order, the FCC concluded that as competitive markets emerge, the ISP could impede competitive behavior and the development of effectively competitive markets. As a result, the FCC determined that settlement arrangements with non-dominant foreign carriers (those with less than 50% market share) should be deregulated. As a result, non-dominant carriers now may negotiate any commercial arrangements with foreign carriers in WTO member

¹³ See supra note 6. .

¹⁴ Implementation and Scope of the Uniform Settlements Policy for Parallel Routes, CC Docket No. 85-204, Report and Order, 51 Fed. Reg. 4736 (Feb. 7, 1986) (*ISP Order*), *modified in part on recon.*, 2 FCC Rcd 1118 (1987) (*ISP Reconsideration*), *further recon.*, 3 FCC Rcd 1614 (1988). See also Regulation of International Accounting Rates, 6 FCC Rcd 3552 (1991), *on recon.*, 7 FCC Rcd 8049 (1992); 47 C.F.R. § 43.51(e)(4); 47 C.F.R. § 64.1001 (1998).

countries and non-WTO member countries that lack market power in their home markets.

Traditional settlement arrangements with foreign carriers holding market power, however, are still subject to the ISP.

The ISP Reform Order also lifted the ISP for settlement arrangements with foreign carriers holding market power from both WTO and non-WTO countries on routes where at least 50% of the U.S.-billed traffic is terminated in the foreign market at rates that are 25% below the FCC's specified benchmark rates. In order to receive this exemption, US carriers are required to file a petition with the FCC.

In the case of ISR, the Commission has determined that it may be approved on an international route involving a WTO member country if fifty percent or more traffic on the route is settled at a rate that does not exceed the Commission's required benchmark rate. A carrier must petition for ISR authority with the FCC. These petitions are treated on a "streamlined" basis and most are granted within 14 days after appearing on public notice. To date, ISR is authorised on 67 routes, and the list is continues to grow.

The US has embraced global liberalisation, to the benefit of carriers and consumers worldwide. WorldCom encourages iDA to adopt a similar approach in its evaluation of competitive routes.

In conclusion, WorldCom supports regulatory measures to prevent against anti-competitive behaviour by dominant carriers, as long as they are narrowly tailored and have the overall goal of promoting competition. We believe that Hong Kong, the United Kingdom, and the United States have achieved a successful balance.

VI. Hong Kong, Singapore and the United States: A Comparison of Liberalised and non-Liberalised Routes in the Asia-Pacific Region

As numerous markets within the Asia-Pacific region have opened or are opening to competition, iDA retains restrictions on routes that other countries deem to be competitive. For example, Hong Kong and the US have deemed Malaysia, South Korea, and the Philippines routes to be fully competitive, whereas Singapore has yet to re-classify these as Category I destinations. WorldCom recommends that iDA review those routes that have not yet been liberalised and seek ways in which to promote competition, as other countries have done.

	United States	Hong Kong	Singapore
Australia	<i>liberalised</i>	<i>Category A</i>	<i>Category I</i>
Hong Kong	<i>liberalised</i>	---	<i>Category I</i>
Japan	<i>liberalised</i>	<i>Category A</i>	<i>Category I</i>
Korea (South)	<i>liberalised</i>	<i>Category A</i>	Category II
Malaysia	<i>liberalised</i>	<i>Category A</i>	Category II
New Zealand	<i>liberalised</i>	<i>Category A</i>	<i>Category I</i>
Philippines	<i>liberalised</i>	<i>Category A</i>	Category II
Singapore	<i>liberalised</i>	<i>Category A</i>	---
Thailand	<i>liberalised</i>	Category B	Category II
United States	---	<i>Category A</i>	<i>Category I</i>

Italics = liberalized

VII. Internet-based Technologies and their Impact on Traditional Telecommunications Services.

The pressures that IP telephony and other alternative network services are placing on the accounting rate system are recognised by many countries and industry observers as accelerating the move towards open telecommunications markets and cost-oriented rates. The Internet has been an innovative force in stimulating electronic communications and has produced technological advancements that enhance the day-to-day activities of the international community. In this period of technological development, WorldCom believes that the importance of stimulating innovation and experimentation should be emphasised as factors that

contribute positively to sustainable economic growth. We believe that countries should embrace IP telephony and remain open to its development. The application of legacy PSTN regulations would inhibit full deployment of new IP-based services.

VIII. CONCLUSION

WorldCom recognizes that liberalisation has spurred significant developments in the international telecommunications market. New carriers have emerged in markets that were previously closed to competition, rates for consumers have dropped considerably, while call volume and capacity have increased worldwide.

WorldCom encourages iDA to modify its accounting rate regulations in order to reflect the current market reality, i.e., that numerous competitive carriers exist in both Singapore and in foreign markets. Specifically, iDA should remove parallel accounting rate and proportionate return measures for carriers that lack market power. Because the measures are more appropriately applied to monopoly carriers in markets that are deemed uncompetitive, it is inappropriate to apply them to carriers who have no ability to negatively impact the market in Singapore.