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

In the Matter of	)	
	)	CC Docket No. 79-252
Motion of AT&T to be Declared	)	
Non-Dominant for International Service	)	

ORDER ON RECONSIDERATION

Adopted: September 30, 1998 Released: October 5, 1998

By the Commission:

I.II. A. In this decision, we deny petitions seeking reconsideration of our Order declaring AT&T non-dominant in the market for international message telephone services (IMTS).[1] We reaffirm our conclusion that AT&T no longer possesses sufficient market power to merit dominant carrier regulation in the IMTS market. We conclude that relieving AT&T of the regulatory burdens associated with dominant carrier regulation will serve the public interest by promoting competition in international telecommunications services.

BACKGROUND

B. In the *Competitive Carrier* proceeding, the Commission defined a dominant carrier as one that "possesses market power" and noted that control of bottleneck facilities was "*prima facia* evidence of market power requiring detailed regulatory scrutiny."[2] The Commission also concluded that, if a common carrier was determined to be "non-dominant," the regulatory requirements of Title II of the Communications Act, as amended,[3] would be "streamlined." Specifically, tariffs filed by non-dominant carriers would be presumed lawful and would be subject to reduced notice periods.[4]

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[1] *See* Motion of AT&T Corp. to be Declared Non-Dominant for International Services, *Order,* 11 FCC Rcd 17963 (1996) (*AT&T International Non-Dominance Order*).

[2] *See* Policy & Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, CC Docket No. 79-252 (*Competitive Carrier*), *First Report & Order*, 85 FCC 2d 1 (1980); *Second Report & Order*, 91 FCC 2d 59 (1982); *recon.* 93 FCC 2d 54 (1983); *Third Report & Order*, 48 Fed. Reg. 46,791 (1983); *Fourth Report & Order*, 95 FCC 2d 554 (1983*), vacat*ed, AT&T v. FCC, 978 F.2d 727 (1992), *cert. denied*, MCI Telecommunications Corp. v. AT&T, 113 S.Ct. 3020 (1993); *Fifth Report & Order*, 98 FCC 2d 1191 (1984)*; Sixth Report & Ord*er, 99 FCC 2d 1020 (1985)*, rev'd*, MCI Telecommunications Corp. v. FCC, 765 F.2d 1186 (D.C. Cir. 1985).

[3] 47 U.S.C. §§ 201 *et seq.*(referred to herein as "the Communications Act" or "the Act").

[4] *Competitive Carrier, First Report and Order*, 85 FCC Rcd at 57-58, 92 and 102.

C. The Commission first applied its dominant/non-dominant carrier regulatory classification to U.S. international carriers in 1985 and concluded that (1) AT&T was dominant in the provision of IMTS and (2) all other IMTS providers *(e.g.*, Sprint and MCI), except the non-contiguous domestic carriers, were not dominant.[5] The Commission determined that, for international service, demand and supply elasticity revealed two major product markets, IMTS and non-IMTS, and that every destination country constituted a separate geographic market.[6] The Commission also concluded that no carrier -- including AT&T -- was dominant in the provision of non-IMTS service for any geographic market.[7] In addition, the Commission found all foreign-owned carriers to be dominant for all service to all countries.[8]

D. The Commission modified the rules in 1992 so as to regulate U.S. international carriers, both U.S.- and foreign-owned, as dominant on routes where an affiliated foreign carrier has the ability to discriminate in favor of its U.S. affiliate through control of bottleneck services or facilities in the destination market.[9] The Commission reaffirmed this policy in the *Foreign Carrier Entry Order* and, most recently, in the *Foreign Participation Order.*[10] The Commission also concluded that dominant carrier regulation should apply to U.S. carriers in their provision of international basic service on particular routes where a co-marketing or other arrangement, including an alliance, with a foreign carrier with market power presents a substantial risk of anticompetitive effects in the U.S. international services

[5]International Competitive Carrier Policies, 102 FCC 2d 812 (1985) (*International Competitive Carrier*), *recon. denied*, 60 RR 2d 1435 (1986). As a dominant carrier, AT&T after 1989 was subject to price cap regulation (with constraints on pricing flexibility and long notice periods for tariff changes) in its provision of residential IMTS. These requirements were relaxed for some AT&T international services that were competitive (such as commercial IMTS). *AT&T International Non-Dominance Order* at ¶ 26-28.

[6]*International Competitive Carrier*, 102 FCC 2d at 828.

[7]*International Competitive Carrier,* 102 FCC 2d at 833-835; *see also id*. at 816, n.6 ("Examples of non-IMTS services are telex, telegram ... private line, high and low speed data, [and] videoconferencing").

[8]*International Competitive Carrier*, 102 FCC 2d at 842-843, 846.

[9]Regulation of International Common Carrier Services, 7 FCC Rcd 7331, 7334 (1992) (*International Services*). The regulatory safeguards imposed on carriers that are regulated as dominant on particular routes due to an affiliation or alliance with a foreign carrier with market power are set forth in § 63.10(c) and differ from the regulatory safeguards imposed on carriers that are dominant for reasons other than a foreign carrier affiliation. Section 63.10(c) requires quarterly reporting of traffic and revenue, provisioning and maintenance, and circuit status; limited structural separation (separate corporate affiliate; separate books of account; no joint ownership of transmission or switching facilities); and 1-day notice for tariffs. 47 C.F.R. § 63.10(c).

[10]Market Entry and Regulation of Foreign-affiliated Entities, 11 FCC Rcd 3873 (1995) (*Foreign Carrier Entry Order*), *recon. granted in part, denied in part and deferred in part* in Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Market Entry and Regulation of Foreign-Affiliated Entities, 12 FCC Rcd 23891 (1997) (*Foreign Participation Order*), *recon. pending*.

market.[11]

E. In October 1995, the Commission found that, although AT&T retained the ability to control prices for some *de minimis* domestic, interstate, interexchange services, AT&T did not have the ability unilaterally to control prices in the overall domestic, interstate, interexchange market. The Commission found that continuing such regulation harmed market performance by stifling innovation and imposing compliance costs on AT&T.[12] The Commission deferred AT&T's request to be reclassified as non-dominant in its provision of international service, including IMTS.[13]

F. On November 8, 1995, AT&T filed an *ex parte* letter seeking to be declared non-dominant for international markets on the grounds that evidence in the record established that it lacked market power under our standards for determining dominance. The Commission sought public comment and twelve parties opposed AT&T's motion.[14]

G. In its Order granting AT&T's petition to be declared non-dominant in international services, the Commission undertook a four-part analysis to determine if AT&T had market power for the provision of IMTS within any geographic market -- that is, between the United States and any international point. The Commission analyzed: (1) market share; (2) the demand elasticity of AT&T's customers; (3) the supply elasticity of the market; and (4) AT&T's cost structure, size, and resources. The Commission also examined why U.S. international calling prices were higher than U.S. domestic long distance calling prices. The Commission used AT&T's market position on a worldwide basis as a surrogate for a route-by-route analysis, with two exceptions: (1) it scrutinized individually AT&T's market position on particular routes that had not supported facilities-based entry by competing U.S. carriers; and (2) it applied a route-specific approach to analyze the competitive impact of AT&T's affiliations and alliances with foreign carriers on particular U.S. international routes. With the exception of these routes, the Commission concluded that analyzing AT&T's market power on a worldwide basis was an acceptable surrogate for a route by route analysis of each of more than 200 international

[11] *International Services*, 7 FCC Rcd at 7333; *Foreign Carrier Entry Order*, 11 FCC Rcd at 3969; *Foreign Participation Order,* 12 FCC Rcd at 23992. Carriers that are regulated as dominant on particular routes due to a co-marketing or other arrangement with a foreign carrier with market power are subject to the rules set forth in § 63.10(c). *See supra*, n.9.

[12] Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, 11 FCC Rcd 3271 (1995) (*AT&T Reclassification Order*).

[13] *AT&T Reclassification Order*, 11 FCC Rcd at 3357. As discussed, *supra* ¶ 3, the Commission determined in the 1985 *International Competitive Carrier* proceeding that no carrier, including AT&T, was dominant in the provision of non-IMTS services. In 1987, however, the Commission found AT&T to be dominant in its provision of multi-purpose earth station services, a separate international product market. *See Id.* at ¶ 22. No party has sought reconsideration of our determination in the *AT&T International Non-Dominance Order* that AT&T is no longer dominant in its provision of multi-purpose earth station services.

[14] *AT&T International Non-Dominance Order* at ¶ 29.

locations.[15]

H. The Commission found that AT&T's market share for the provision of IMTS had declined from 98.5 percent in 1985 to 72.7 percent in 1991 to 59 percent in 1994.[16] In comparison, AT&T's share of domestic interexchange traffic declined from 90 percent in 1985 to 55.2 percent in 1994. The Commission found that, although AT&T's share of IMTS traffic was a few percentage points higher than its share of domestic traffic, AT&T had lost market share faster in the international than in the domestic market. The Commission concluded that there was no reason based on market share to regulate AT&T differently in the international than in the domestic market.[17] The Commission also found that AT&T's market share had similarly declined in the 76 countries for which it had a greater than 90 percent market share and the 18 countries where it had a 100 percent market share in 1991. In these countries, AT&T's average market share (weighted by revenues) fell from 95 percent in 1991 to 74 percent by 1994. The Commission noted that the trend suggested that these declines would continue. With respect to these countries, where AT&T's market share was significantly greater than the average, the Commission concluded that the high market shares were not an obstacle to declaring AT&T non-dominant in the absence of barriers to entry that would prevent AT&T's competitors from continuing to gain market share.[18]

I. With respect to demand elasticity,[19] the Commission found substantial evidence that AT&T's customers are highly price sensitive and that the evidence supports our conclusion that AT&T alone could not raise and sustain prices above a competitive level for international services. For instance, the Commission found those consumers who make over $15 per month in international calls switch carriers over 25 percent more often than average, and that even the remainder of international consumers (those averaging under $15 per month) switch carriers at a higher rate than customers that make no international calls. The Commission found that an increasing percentage of AT&T's international "dial 1+" service customers were selecting discount plans rather than paying AT&T's basic rates. In 1989, the percentage of AT&T's international "dial 1+" service traffic on discount plans was zero. By 1994, this percentage had increased to 60 percent. By comparison, calls made under AT&T's True Promotions plans

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[15] *AT&T International Non-Dominance Order* at ¶¶ 32-36.

[16] *Id.* at ¶ 37.

[17] *Id.* at ¶ 39.

[18] *Id.* at ¶ 40. With respect to four markets in which AT&T was the sole facilities-based provider of IMTS, the Commission found that AT&T's share of U.S.-billed minutes on each of these routes constituted 0.002 percent or less of the total billed minutes in 1994; collectively the minutes on these routes accounted for 0.0025 percent. The Commission forbore from imposing dominant carrier regulation for the provision of IMTS to those countries. *Id.* at ¶¶ 94-97.

[19] Demand elasticity or responsiveness is the propensity of AT&T's customers to switch carriers or otherwise change the amount of services they purchase from AT&T in response to relative changes in price and quality. High demand elasticities indicate customers' willingness and ability to switch to or from a carrier in order to obtain price reductions and desired features. *Id.* at ¶ 42.

accounted for only 53 percent of Domestic basket 1 traffic in 1994. The Commission stated that these data indicate that IMTS customers are responsive to market signals, including price, and are consistent with the conclusion that AT&T's own price elasticity is high, and that customers are likely to switch carriers to take advantage of price promotions.[20]

J. To measure supply elasticity,[21] the Commission looked at the ability of U.S. carriers to (1) obtain operating agreements in other countries and (2) obtain submarine cable capacity in a timely fashion. The record in this case showed that multiple U.S. carriers have operating agreements to all but the smallest IMTS markets that account for less than one-tenth of one percent (0.1 percent) of international revenue. The Commission concluded that new U.S. facilities-based suppliers may obtain operating agreements and enter the market much more easily than a decade ago.[22] The Commission also noted that while AT&T owned 85 percent of the U.S. end of TAT-6 and 7 in 1985, its ownership share of submarine cables had declined to 43 percent in 1996. In 1995, AT&T's ownership share of the total submarine cable capacity worldwide amounted to 21.6 percent. In addition, AT&T did not have a lead role in several cables: PTAT, CANUS-1/CANTAT-3, and the North Pacific Cable Network.[23] Though commenters raised several concerns regarding access to international facilities, the Commission stated that those issues "were the subject of contractual arrangements with regard to specific submarine cable facilities" and encouraged carriers to raise their concerns in the context of Commission oversight of Construction and Maintenance Agreements (C&MA's) for future cable facilities. The Commission concluded that there is a sufficiently elastic supply to mitigate any potential exercise of unilateral market power by AT&T.[24]

K. The Commission also concluded that AT&T's cost structure, size and superior resources

[20] *Id.* at ¶ 46.

[21] The two factors that determine supply elasticities in the market are the supply capacity of existing competitors and low entry barriers. Supply elasticities tend to be high if existing competitors have or can easily acquire significant additional capacity in a relatively short time period. Supply elasticities also tend to be high even if existing suppliers lack excess capacity if new suppliers can enter the market relatively easily and add to existing capacity. *Id.* at ¶ 48.

[22] *Id.* at ¶ 51. The Commission further observed that alternative means of routing IMTS are increasingly available to U.S. carriers. The Commission noted, for instance, that it had recently removed U.S. regulatory impediments to the provision of service on an indirect, switched transit basis to facilitate the ability of U.S. facilities-based carriers to serve thin routes, or routes for which they cannot obtain a direct service agreement. The Commission also noted its approval of "switched hubbing" IMTS via U.S. international private lines between the United States and countries it has deemed "equivalent" (which at that time were Canada, the United Kingdom, and Sweden). *Id.* We more recently revised our "switched hubbing" and related rules governing "international simple resale" (ISR) in the *Foreign Participation Order. See infra* ¶ 18, n.44.

[23] *AT&T International Non-Dominance Order* at ¶ 51.

[24] *Id.* at ¶¶ 52-62.

are not alone persuasive evidence of market power. The Commission noted, for instance, that AT&T faces large, well-financed competitors that involve multi-billion dollar investments from the predominant carriers in three of the four largest European Union countries, with MCI and Sprint having total toll service revenues of $11.7 billion and $6.8 billion, respectively, compared to AT&T's $36.9 billion.[25] Although several parties alleged anticompetitive harm from AT&T's global alliances, the Commission concluded that these allegations were unsupported. However, the Commission also noted that anticompetitive harm would result if one of AT&T's partners used its bottleneck control to discriminate against rivals or consistently benefit the alliance. The Commission re-emphasized that our rules did not permit AT&T to enter into exclusive arrangements or receive special concessions, and invited carriers to bring to our notice any patterns of discrimination in access to foreign bottleneck facilities that favor the AT&T alliance.[26]

L. Finally, the Commission concluded that IMTS prices were high due to imperfections in the U.S. international market, particularly the high accounting rates that increase the profits of foreign monopolists. The Commission also recognized that while AT&T does not have the unilateral ability to set prices, AT&T still has sufficient market share to have some effect on overall market performance. Accordingly, the Commission welcomed AT&T's voluntary pricing commitments as a means of spurring competition.[27]

DISCUSSION

M. Petitioners raise three substantive arguments on reconsideration: (1) AT&T continues to have market power in the U.S IMTS market and should be regulated as a dominant carrier;[28] (2) because AT&T's global alliance partners have market power in their home markets, AT&T should be regulated as dominant on those routes where its foreign partner has the ability to discriminate against other U.S.

[25] *Id.* at ¶ 66.

[26] *Id*. at ¶¶ 71-77. The Commission stated that the pertinent questions in monitoring these alliances are: (1) is there any evidence that AT&T's partners use control over bottleneck facilities to discriminate against AT&T's rivals in the markets contested by AT&T's global alliances, and (2) is there any evidence that in practice AT&T's foreign partners are consistently choosing AT&T's global alliances as the preferred supplier for these services. *Id.* at 74.

[27] AT&T voluntarily committed to maintain its existing rates for residential IMTS for a three-year period ending May 9, 1999, and to maintain the rates in effect on April 1, 1996 for customers enrolled in AT&T's True Country offer (excluding China) for a period ending December 31, 1996. After December 31, 1996, AT&T may raise rates for True Country; however, AT&T committed that, if the rates for this offer increase by more than five percent (excluding China), AT&T will have an offer in place with rates for a customer's selected country (excluding China) discounted 15 percent compared to the same basic international long distance price schedule as in the True Country offer. AT&T has agreed to make this 15 percent discounted offer available until May 9, 1999. *Id.* at ¶¶ 87-88.

[28] MFS Petition at 7-8.

carriers;[29] and (3) the Commission should deny AT&T non-dominant status because AT&T is using its bottleneck control over cable landing stations to discriminate against other U.S. carriers.[30] We address each of these arguments below.

N. In addition to the issues addressed below, one petitioner, ABS-CBN, urges the Commission to require AT&T to assist ABS-CBN in acquiring capacity on a minimum of two cable systems, Trans Pacific Cable-5 (TPC-5) and the Asia Pacific Cable Network (APCN), in which AT&T holds an ownership interest.[31] We conclude that, with respect to TPC-5, ABS-CBN's petition is moot because ABS-CBN has acquired the capacity it sought.[32] Further, we note that APCN has no landing points in the United States. Because we have no jurisdiction with respect to cables, such as APCN, that do not land on any U.S. point, we deny ABS-CBN's petition relating to APCN.[33]

A. AT&T's Individual Market Power

O. MFS urges us to reverse our finding that AT&T lacks individual market power in the U.S. international services market, because (1) AT&T continues to have the ability to control prices for IMTS and (2) AT&T still has control over bottleneck facilities. MFS states that the Commission erred in "downplaying" AT&T's role in setting IMTS prices by concluding that structural problems with the international accounting rate system, rather than AT&T, were responsible for causing IMTS rates to be higher than rates for domestic telecommunications services. MFS argues that AT&T's "size and market share" give it the unique ability to manipulate the accounting rate systems and keep rates high. MFS also argues that AT&T has an unfair competitive advantage over its competitors because its control of bottleneck facilities gives it the ability to obtain operating agreements that only a handful of other carriers can obtain.[34]

P. We are not persuaded by these arguments. In the 1996 *AT&T International Non-Dominance Order,* the Commission concluded that AT&T lacks market power in the U.S. IMTS market because, *inter alia,* (1) AT&T's overall market share of U.S. international calls declined from 98.5 percent in 1985 to 59 percent in 1994; (2) IMTS customers were highly responsive to price signals and likely to switch carriers if prices were raised; (3) supply capacity was sufficiently elastic to constrain AT&T's

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[29]MFS Petition at 3, 4-5, 10-16, 18-21; Sprint Petition at 7-12; WorldCom Comments at 2-5.

[30]Sprint Petition at 12-14.

[31]ABS-CBN Petition at 1, 6-9.

[32]ABS-CBN Reply at 2. *See* AT&T Opposition at 16-17.

[33]Although ABS-CBN claims that AT&T made a voluntary commitment to "act as a broker for U.S. carriers that have been unable to become owners of international cables," ABS-CBN Reply at 4, we note that AT&T's commitment applies only "to consortium cable systems that land in the U.S...." *See AT&T International Non-Dominance Order*, Appendix A, at ¶ 3b.

[34]MFS Petition at 7-8.

market behavior; and (4) because AT&T faced several large, well-financed competitors, including MCI and Sprint, its structure, size and resources were not alone sufficient to exercise market power.[35]

Q. MFS does not present any evidence to contradict the Commission's finding that AT&T lacks unilateral market power, other than simply to restate an excerpt from the 1996 *AT&T International Non-Dominance Order* indicating that AT&T may have the ability to "have some effect" on IMTS pricing.[36] We note that the test for "market power" is the power to control prices, rather than just to have some effect on prices.[37] We also note, moreover, that the Commission specifically found that "AT&T does not have the unilateral ability to set prices and should not be regulated as dominant."[38] Thus, we conclude that MFS's argument that AT&T has the ability unilaterally to raise prices is unsupported by the record.

R. We also find that MFS' argument that AT&T has market power because it controls bottleneck facilities is similarly without merit. MFS argues that AT&T's "control over bottleneck facilities" gives it the ability to obtain operating agreements with more foreign correspondents, and on more favorable terms, than other carriers.[39] Here, too, MFS does not provide any evidence to support its claim but simply refers to statements in the *AT&T International Non-Dominance Order* to the effect that "a large number of carriers" have been unable to get operating agreements.[40] Although the Commission did state its concern that some carriers had been unable to obtain operating agreements, the Commission also concluded that "multiple U.S. carriers have operating agreements to all but the smallest IMTS markets that account for less than one-tenth of one percent (0.1 percent) of international revenue" and that "new U.S. facilities-based suppliers may obtain operating agreements and enter the market much more easily than a decade ago."[41] Further, we expect that, as members of the World Trade Organization (WTO) implement their market access commitments for the provision of international services under the Agreement on Basic Telecommunications concluded last year, AT&T's competitors will be able to obtain operating agreements from new entrants as well as incumbent carriers in WTO countries.[42] We also reaffirm the Commission's finding that alternative routing arrangements are increasingly available to U.S. carriers.[43] Since the 1996 *AT&T International Non-Dominance Order* and conclusion of the WTO

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[35] *Supra* at ¶¶ 7-11.

[36] MFS Petition at 7, *quoting from AT&T International Non-Dominance Order* at ¶ 88.

[37] *See* 47 C.F.R. § 61.3(o).

[38] *AT&T International Non-Dominance Order* at ¶ 88.

[39] MFS Petition at 8.

[40] *Id.* at 9, *quoting from AT&T International Non-Dominance Order* at ¶ 10.

[41] *AT&T International Non-Dominance Order* at ¶ 50.

[42] *Foreign Participation Order*, 12 FCC Rcd at 23906-23910.

[43] *See AT&T International Non-Dominance Order* at ¶ 35.

agreement we have, in fact, increased the number of countries through which we permit U.S. carriers to hub their IMTS traffic.[44] We expect that, with the accelerated trend towards competition in foreign markets, and the resulting downward pressure on accounting rates, we will continue to see additional countries emerge as hubs for U.S. traffic. For these reasons, we reaffirm our finding that AT&T does not control bottleneck facilities that give it market power in the U.S. IMTS market.

S. Recent developments reinforce our conclusion that AT&T lacks market power in the U.S. international services market. AT&T's overall market share has fallen further to 49.3 percent in 1996.[45] We also note that submarine cable capacity has increased significantly, with the result that AT&T

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[44] *See* In the Matter of AT&T Corp., *et. al,* Applications for Authority, Pursuant to Section 214 of the Communications Act of 1934, as amended, to provide switched services using private lines interconnected with the public switched network at one or both ends between the United States, on the one hand, and Austria and Switzerland on the other, *Order and Authorization*, DA 98-1180 (Int. Bur., rel. June 29, 1998); In the Matter of AT&T Corp., *et. al,* Applications for Authority, Pursuant to Section 214 of the Communications Act of 1934, as amended, to provide switched services using private lines interconnected with the public switched network at one or both ends between the United States, on the one hand, and Luxembourg, Norway, Denmark, France, Germany and Belgium on the other, *Order and Authorization,* DA 98-816 (Int. Bur., rel. April 30, 1998); In Re Application of KPN US Inc.*,* Application for Authority under Section 214 of the Communications Act of 1934, as amended, to Provide Facilities-based Services and to Resell Interconnected Private Lines to Provide International Switched Service between the United States and the Netherlands, *Order, Authorization and Certificate*, DA 98-156 (Int. Bur., rel. January 30, 1998); In the Matter of Cable & Wireless, Inc., *et. al,* Applications for Authority pursuant to Section 214 of the Communications Act of 1934, as amended, to resell international private line services interconnected to the public switched network for the provision of service between the United States and Australia, *Memorandum Opinion, Order and Certificate*, DA 97-2554 (Int. Bur., rel. December 17, 1997); In the Matter of Communications Telesystems International*,* Application for Authority pursuant to Section 214 of the Communications Act of 1934, as amended, to operate as an international private line carrier, *Memorandum Opinion, Order and Certification*, DA 96-2183 (Int. Bur., rel. December 31, 1996) (New Zealand Equivalency). Our rules generally permit U.S. carriers to hub their switched traffic on a global basis through countries for which we have approved ISR, i.e., the routing of U.S.-inbound or outbound switched traffic over private lines. Section 63.17(b) of our rules, 47 C.F.R. § 63.17(b), permits U.S. carriers to route their inbound and outbound IMTS over private lines between the United States and ISR-approved countries and to interconnect those private lines with the inbound and outbound international switched services and facilities of those hub countries. This practice enables U.S.-authorized carriers to route their switched traffic between the United States and countries for which they may be unable to obtain an operating agreement. Under rules adopted in the *Foreign Participation Order,* we will authorize ISR between the United States and a WTO member country upon a finding either that the country at the foreign end of the private line provides equivalent resale opportunities or that settlement rates for at least 50 percent of the U.S. billed traffic between the United States and that country are at or below the benchmark settlement rates adopted for that country in the *Benchmarks Order.* In the Matter of International Settlement Rates, *Report and Order,* 12 FCC Rcd 19806 (1997), *recon. and appeals pending* (*Benchmarks Order*). We will authorize ISR between the United States and a non-WTO member country upon a finding that both conditions are met. 47 C.F.R. § 63.21 (a).

[45] 1996 Section 43.61 International Telecommunications Data (January 1998).

has even less of an ability than previously to control prices by restricting supply.[46] In short, we see no basis for reversing the conclusion the Commission reached in 1996 that AT&T lacks market power in the IMTS market.

B. AT&T's Global Alliances

T. MFS, Sprint, and WorldCom urge the Commission to regulate AT&T as dominant on routes where its global alliance partner has market power.[47] Sprint also urges the Commission to regulate AT&T as dominant in its provision of IMTS to France and Germany.[48] We do not further address Sprint's argument with respect to France and Germany because it is now moot.[49] We also reject MFS's claim that in this proceeding the Commission used the standard of "individual market power" rather than "market power" as a new test to determine if AT&T and its global alliances should be regulated as dominant.[50]

[46] *Ex parte* letter to Magalie Roman Salas, Secretary, Federal Communications Commission, from James J. R. Talbot, Senior Attorney, AT&T, dated June 8, 1998, at 2-3 (*AT&T June 8, 1998 letter*).

[47] MFS Petition at 3, 4-5, 10-16, 18-21; Sprint Petition at 7-12; WorldCom Comments at 2-5. AT&T's WorldPartners global alliance had 13 members, as of January 1996. *Ex parte* letter to William F. Caton, Acting Secretary, Federal Communications Commission, from R. Gerard Salemme, Vice President Government Affairs, AT&T, dated March 21, 1996, at 2, n.1 ("AT&T March 21, 1996 letter"). The members are: AT&T, KDD (Japan), Singapore Telecom, AT&T (UK), Telstra (Australia), Telecom New Zealand, Hong Kong Telecom, Korea Telecom, PLDT (The Philippines), Bezeq (Israel), ITA (Taiwan), Unitel (Canada), and Unisource. Unisource at that time consisted of Telia (Sweden), Swiss Telecom, KBN (The Netherlands), and Telefonica de Espana. Telefonica de Espana has since withdrawn from WorldPartners.

[48] Sprint Petition at 2-7.

[49] Sprint argued that AT&T had an unfair competitive advantage on the U.S.-France and U.S.-Germany routes because the Commission, as a condition of permitting France Telecom and Deutsche Telecom to acquire an equity interest in Sprint, imposed dominant carrier regulations on Sprint that constrained Sprint's ability to compete with AT&T in France and Germany. *Id.* The Bureau subsequently concluded that the French and German markets for telecommunications services are open to competition, declared Sprint non-dominant on the U.S.-France and U.S.-Germany routes, and removed the conditions the Commission had previously imposed. In the Matter of Sprint Corporation, Petition for Declaratory Ruling Concerning Section 310(b)(4) and (d) and the Public Interest Requirements of the Communications Act of 1934, as amended, File No. ISP-95-002, and Petition for Declaratory Ruling Concerning Section 310(b)(4) and (d) of the Communications Act of 1934, as amended, File No. ISP-95-002, *Declaratory Ruling and Order* (Int. Bur., rel. June 26, 1998). Thus, at present, AT&T does not have the unfair competitive advantage over Sprint that Sprint alleged it did.

[50] *See* MFS Petition at 3 ("The Commission loses substantial credibility with its counterparts abroad when it changes its test from "market power" to "independent market power" [*sic*] merely to favor its traditionally dominant carrier.") and 4, n.7 ("The FCC's focus on "individual market power" appears to constitute a new test for market power intended to allow the Commission to focus primarily on AT&T as a sole provider of its international services, and not on AT&T as a provider of international services through its global alliances.").

The Commission has previously used the term "individual market power" synonymously with "unilateral market power" to distinguish it from possible oligopolistic behavior, or price coordination, by AT&T, MCI, and Sprint.[51] We clarify that "individual market power" does not constitute a new test that the Commission applied to review whether AT&T should be regulated as dominant on particular routes due to its global alliances.

U. We do not agree that we should impose our Part 63 dominant carrier rules on AT&T on routes where its global alliance partners may have market power in their home markets.[52] Sprint suggests that we do so because AT&T Uniworld Carrier Services ("Uniworld"), the joint venture between Unisource and AT&T, creates incentives for AT&T's global alliance partners to discriminate against AT&T's competitors. Sprint, therefore, urges the Commission to "revisit its apparent assumption that only direct equity investments by one carrier in another carrier" should be regulated as dominant.[53] Sprint incorrectly describes our policy in this regard. As the Commission stated recently in the *Foreign Participation Order,* our dominant carrier regulations apply to a U.S. carrier's provision of a service on a particular route "where a co-marketing agreement or other non-equity arrangement with a foreign carrier presents a substantial risk of anticompetitive harm in the U.S. international services market.[54] The Commission also stated that "applying dominant classification to *all* non-equity arrangements, absent a finding of substantial risk of competitive harm, would impose an unnecessary burden."[55] The Commission noted that non-equity arrangements generally raised fewer concerns with respect to the potential for anticompetitive harm than equity arrangements.[56]

V. We disagree with Sprint that AT&T's foreign partners have the same incentive to discriminate against AT&T's competitors whether they buy stock in AT&T or form a joint venture with it such as Uniworld.[57] Sprint argues that AT&T and its partners have invested substantial sums in Uniworld

[51] *See e.g., AT&T Reclassification Order,* 11 FCC Rcd at 3314.

[52] *See supra* ¶ *3*, discussing Section 63.10(c) regulations applicable to carriers regulated as dominant on particular routes due to an affiliation or alliance with a foreign carrier that has market power.

[53] Sprint Petition at 10. *See* MFS Petition at 1314, n.27.

[54] *Foreign Participation Order*, 12 FCC Rcd at 23992.

[55] *Id.*, 12 FCC Rcd at 23992-23993 (emphasis added). *See Foreign Participation Order,* 12 FCC Rcd at 23992; *Foreign Carrier Entry Order*, 11 FCC Rcd at 3909; *International Services*, 7 FCC Rcd at 7333.

[56] *See Foreign Participation Order*, 12 FCC Rcd at 23992*,* n.460 (in non-equity arrangements, incentives to discriminate are not as great as in an affiliated or fully integrated relationship). *See also* Sprint Corporation Petition for Declaratory Ruling Concerning Section 310(b) and (d), 11 FCC Rcd 1850 (1996); MCI Communications Corporation/British Telecommunications PLC, Joint Petition for Declaratory Ruling Concerning Section 310(b) and (d), 9 FCC Rcd 3960 (1994) (a foreign carrier with equity in a carrier is more likely to have an incentive to discriminate in the provision of service to a carrier's competitor because it would share any increased profits earned by the carrier).

[57] *See* Sprint Petition at 10.

and have strong financial incentives to see it succeed and to favor it over other competitors, such as Sprint's Global One venture with France Telecom and Deutsche Telecom.[58] We note, however, that despite initial press reports that AT&T and Unisource would merge all of their operations in Europe to create a company with 5,000 employees and over $1 billion in revenue, AT&T states that such a merger did not in fact take place.[59] Instead, the record shows that Uniworld is a marketing alliance that uses the services provided by licensed carriers (including the Unisource partners) to design and market intra-European closed user group voice services (i.e., business networks) for large multi-national customers throughout Europe.[60] Although Unisource partners may have some incentive to favor Uniworld by refusing to provide AT&T's U.S. competitors the underlying carrier services or to discriminate against them in some way, we believe that AT&T's Uniworld partners have a far greater incentive to serve all carriers on the same terms. First, the European Union has ordered Unisource and Uniworld to provide service on a nondiscriminatory basis.[61] Second, the foreign carrier will collect the same charges whether it provides the service to Uniworld or AT&T's competitors, and is not likely to refuse to provide underlying transmission service to a carrier who requests such service. Hence, we do not find on this record a substantial risk of competitive harm that requires us to regulate AT&T as dominant because of its global alliances. We also note that our dominant carrier rules apply to providers of telecommunications services between the United States and foreign points but not to traffic that originates and terminates entirely outside the United States, such as Uniworld's intra-European services.[62] Thus, even if Sprint were able to show that Unisource carriers have a financial incentive to discriminate against its Global One venture in providing transmission services to compete with Uniworld's intra-European service offerings, we do not have jurisdiction to address that issue and, in any event, the dominant carrier safeguards that Sprint urges us to impose on AT&T would not provide an effective remedy.

W. Several petitioners also cite the potential for discriminatory accounting rate treatment by AT&T's global alliance partners in urging the Commission to impose dominant carrier regulation on AT&T.[63] The Commission concluded in its *Order* that discriminatory accounting rate treatment was insufficient grounds for regulating AT&T as dominant but invited carriers to notify it of "any patterns of discrimination in access to foreign bottleneck facilities that favor the AT&T alliance."[64] The petitioners in response allege that AT&T's alliance partners: (1) reduced the accounting rate for AT&T but not for

[58] *Id.*

[59] *AT&T June 8, 1998 letter* at 1-2.

[60] *See AT&T International Non-Dominance Order* at ¶ 72. *See also ex parte* letter to William F. Caton, Acting Secretary, Federal Communications Commission, from R. Gerard Salemme, Vice President Government Affairs, AT&T, dated March 21, 1996, at 2-5.

[61] *AT&T June 8, 1998 letter* at 1-2.

[62] *See* 47 C.F.R. § 63.10(c).

[63] MCI Petition at 3-8; Sprint Petition at 7-9; MFS Petition at 13; WorldCom Comments at 3-4.

[64] *AT&T International Non-Dominance Order* at ¶¶ 73-74. *See supra* at ¶ 11 and n.26.

AT&T's competitors; (2) refused to offer AT&T's competitors the lower rate at the same effective date as for AT&T; or (3) refused to activate circuits until completing accounting rate negotiations.[65] AT&T, however, states that it did not seek or accept any special concessions from a foreign carrier, and, furthermore, urged its global alliance partners in writing to comply with the Commission's policies requiring nondiscriminatory accounting rate treatment for all U.S. carriers.[66] We find that no discrimination actually occurred because AT&T did not accept the favorable treatment it allegedly was offered. We also find that there is no evidence that AT&T's global alliances partners engaged in any discriminatory practices after AT&T, in writing, urged them to comply with the Commission's rules requiring nondiscriminatory accounting rate practices. Thus, we conclude that AT&T's global alliance partners did not use control over bottleneck facilities to discriminate against AT&T's rivals in the markets contested by Worldpartners and Uniworld.[67] We also note that petitioners concerns are addressed by more narrowly tailored remedies, such as our International Settlements Policy (ISP).[68] We reiterate that our ISP requires nondiscriminatory accounting rates, division of tolls and proportionate return traffic,[69] and we note that our precedent specifically prohibits the types of discrimination that petitioners allege.[70]

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[65]*See e.g.,* MCI Petition at 3-4, 5 n.6 (Swisscom reduced accounting rate retroactive to September 1995 for AT&T but retroactive only to January 1996 for MCI; Telia reduced accounting rate from 0.25 to 0.12 SDR for AT&T but proposed higher rate of 0.2 SDR for all other carriers; PTT Telecom Netherlands stopped activating circuits until accounting rate negotiations were completed); Sprint Petition at 7-9 (Swisscom reduced accounting rate retroactive to September 1995 for AT&T but not for Sprint).

[66]AT&T opposition at 5-6. In letters to its global alliance partners, dated June 21, 1996, AT&T stated:

> This letter is to inform you unequivocally and without exception ... that AT&T does not seek to obtain or retain any preferential accounting rate vis-a-vis its U.S. competitors. ... As required by FCC regulation, AT&T's settlement manager advised representatives of your company of the FCC's policy that accounting rate reductions are to be made available to all U.S. carriers with whom you correspond. AT&T fully supports the FCC policy and urges you to respect that policy in your dealings with all U.S. carriers.

Id. at 6.

[67]*See supra* n.26.

[68]Further, as we noted recently, there is a significantly reduced threat of discrimination against U.S. carriers in countries which are "ISR-equivalent" or where settlement rates for at least 50 percent of the settled U.S.-billed traffic are at or below the relevant benchmark rates. In the Matter of 1998 Biennial Regulatory Review -- Reform of the International Settlements Policy and Associated Filing Requirements, Regulation of International Accounting Rates, *Notice of Proposed Rulemaking,* FCC 98-190 (rel. August 6, 1998) at 12. We have proposed to remove the ISP for U.S. carriers serving such countries. *Id.* We designate a country as ISR-equivalent if it affords U.S. carriers equivalent opportunities to resell private lines to provide switched service interconnected with the public switched network at one or both ends. *See supra* n.44 for a listing of ISR-equivalent countries.

[69]*AT&T International Non-Dominance Order* at ¶ 69.

[70]For instance, the Commission has repeatedly held that accounting rate modifications should be

With respect to the additional discrimination that WorldCom alleges may result,[71] we note that our ISP, our "No Special Concessions" rule, and circuit status and traffic reporting requirements protect U.S. carriers from potential discrimination in favor of AT&T with regard to access to facilities by foreign carriers with market power.[72] Thus, we conclude that dominant carrier regulation is not necessary to remedy any preferential treatment on accounting rates that AT&T may receive from foreign carriers.

X. We also do not adopt WorldCom's suggestion that the Commission require AT&T to make a binding commitment not to accept a more favorable accounting rate arrangement from any of its global alliance partners until all U.S. carriers with operating agreements with that foreign carrier have been offered the same arrangement.[73] Such a requirement, we believe, would most likely result in delaying the introduction of accounting rate reductions, without enhancing our ability to enforce the ISP.[74]

C. Submarine Cable Stations

nondiscriminatory and have the same effective date. Regulation of International Accounting Rates, 6 FCC Rcd 3552, 3555, 3558, n.36 (1991) *recon. denied* 7 FCC Rcd 8049 (1992). *See also* AT&T Corp*., et al.,* 11 FCC Rcd 13799 (1996); AT&T Corp*., et al,* 11 FCC Rcd 12107 (1996); In the Matter of AT&T Corp., Proposed Extension of Accounting Rate Agreement for Switched Voice Service with Argentina, *Order,* ISP-96-W-062, DA 96-378 (International Bureau, March 18, 1996) at 3.

[71] *See* WorldCom Comments at 4, n.3.

[72] *See* Implementation and Scope of the International Settlements Policy for Parallel International Communications Routes, 2 FCC Rcd 1118 (1987) (ISP applies to U.S. traffic routed on an indirect, switched transit basis); Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, *Second Report and Order,* and *Third Report and Order,* FCC 97-142 (rel. Apr. 18, 1997) at ¶ 140-141, *Order on Reconsideration*, FCC 97-229 (rel. June 27, 1997), *Order,* DA 98-556 (Com. Car. Bur. rel. Mar. 24, 1998) (ordering partial stay), *further recon. pending* (grooming cannot be offered on discriminatory basis); 47 C.F.R. § 63.14 (No Special Concessions rule); 47 C.F.R. § 43.82 (annual circuit status reports); 47 C.F.R. § 43.61 (a) and (b) (annual and quarterly traffic and revenue reports). We note that, because AT&T carries more than 1.0 percent of U.S. or foreign billed traffic, it is required to file international traffic and revenue reports for all U.S. international routes on a quarterly basis. 47 C.F.R. § 43.61 (b). Carriers regulated as dominant on particular U.S. international routes due to an affiliation or alliance with a carrier that has market power on the foreign end of the route also must file international traffic and revenue reports on a quarterly basis, but only with respect to traffic carried on the dominant route. *See* 47 C.F.R. § 63.10 (c). Thus, the international traffic and revenue reports filed by AT&T are more comprehensive than those filed by carriers regulated as dominant under part 63 of our rules. These reports, moreover, are more relevant to concerns about favorable treatment in the settlements process than any of the other dominant carrier safeguards (*i.e*., circuit status reports, provisioning and maintenance reports, and structural separation from the foreign carrier). *See generally Foreign Participation Order*, 12 FCC Rcd at 23955-23965, 23999-24022.

[73] *See* WorldCom Comments at 4.

[74] *See* Regulation of International Accounting Rates, 7 FCC Rcd 8049, 8052 (1992).

Y. Sprint states that, although it agrees with the Commission that there is a sufficient supply of submarine cable capacity, the *AT&T International Non-Dominance Order* does not address Sprint's concerns that AT&T is using its bottleneck control over cable landing stations to deny Sprint (1) access to capacity it owns and (2) the right to obtain cable restoration when cables fail.[75] In particular, Sprint points to AT&T's delays in activating circuits that Sprint has requested (e.g., on TAT 12/13) and an ongoing dispute relating to restoring Sprint-owned PTAT's service on other cables (TAT-9, TAT-10, and TAT-11) which AT&T manages. Sprint, therefore, requests the Commission to "clarify whether AT&T has any regulatory obligations as a result of its special position with respect to these facilities."[76]

Z. Though Sprint accurately states that, as a matter of physical necessity, only one digital access cross-connect switch (DACS) or demultiplexer can receive the 155 Mbps fiber circuit at the U.S. cable head,[77] it is also true that the owners of a submarine cable can choose to land the cable at any one of several cable landing stations, including stations not owned or operated by AT&T.[78] The number of cable stations not owned by AT&T now includes seven of eight cable stations that have become operational or for which plans have been finalized since 1996.[79] Thus, it is not clear that AT&T has a bottleneck at the cable landing station for purposes of our "market power" analysis. In addition, any of the submarine cable's owners (including Sprint) who are dissatisfied with the cable landing station's operations are free to raise their complaints in accord with the process established by each submarine cable's Construction and Maintenance Agreement (C&MA), the basic ownership agreement. Submarine cable owners typically resolve disputes about these issues by a majority vote of 50 percent or greater, and none of the owners, including AT&T, holds a majority vote.[80] Although Sprint may believe it has not been treated fairly, the record does not show that AT&T has exercised market power to discriminate against Sprint or any other U.S. carrier in its management of U.S. cable station facilities. For these reasons, the Commission concluded in its 1996 *Order,* and we affirm now, that disputes over "contractual

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[75] Sprint Petition at 12-14.

[76] Sprint Petition at 14.

[77] *Ex parte* letter to William F. Caton, Acting Secretary, Federal Communications Commission, from Kent Nakamura, Attorney, Sprint, dated March 20, 1996, at 1.

[78] *Ex parte* letter to William F. Caton, Acting Secretary, Federal Communications Commission, from R. Gerard Salemme, Vice President Government Affairs, AT&T, dated April 8, 1996, at 3-7 (*AT&T April 8, 1996 letter*); *Ex parte* letter to William F. Caton, Acting Secretary, Federal Communications Commission, from Kent Nakamura, General Attorney, Sprint, dated April 16, 1996, at 2-3.

[79] *AT&T June 8, 1998 letter* at 2 (citing cable stations for AC-1 in Brookhaven, NJ, which is operated by GCL; for Gemini in Greenhill, RI, operated by Gemini; for PC-1 in Elliot Point, WA, and Grover Beach, CA, operated by GCL; for Japan-US and Southern Cross in Bodega Bay, CA, operated by WorldCom; for Southern Cross in Morro Bay, CA, operated by WorldCom. AT&T will operate the Hollywood, FL cable station for Columbus III and Americas II.)

[80] *AT&T April 8, 1996 letter* at 4.

arrangements," such as access to and restoration of cable facilities, do not warrant continued classification of AT&T as dominant for IMTS.[81]

AA. In addition, the record shows that AT&T has substantially fulfilled the voluntary commitments it made in 1996 concerning nondiscriminatory operation of the cable facilities.[82] Specifically, with respect to Sprint's circuit activation and restoration claims, AT&T states it (1) reduced the TAT 12/13 circuit activation intervals (i.e., the period between receiving a request and activating a circuit) to 7 days for intra-office and 20 days for inter-office activation and (2) reached agreement with Sprint concerning restoring a failure on TAT 12/13 by using PTAT and restoring a failure on PTAT by using TAT 12/13.[83] Sprint did not oppose AT&T's claim that it fulfilled its voluntary commitments with respect to activating circuits and providing restoration. Accordingly, we find that there is no evidence in the record that AT&T denied Sprint access to cable capacity it owns or did not provide restoration when cables failed.

CONCLUSION

BB. For the foregoing reasons, we affirm our finding that AT&T lacks market power in the international services market and should be regulated as a non-dominant carrier.

ORDERING CLAUSES

CC. Accordingly, it is HEREBY ORDERED that petitions for reconsideration filed by MFS, Sprint, MCI, WorldCom, and ABS-CBN are DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

[81] *See AT&T International Non-Dominance Order* at ¶¶ 61-62.

[82] *AT&T June 8, 1998 letter* at 3-6.

[83] AT&T states that the initial agreement to use PTAT to restore TAT-12 and TAT-12/13 to restore PTAT proved to be impractical because existing backhaul facilities between the cable station for TAT-12 in Green Hill, RI and the cable station for PTAT in Manasquan, NJ were insufficient for this purpose. Thus, mutual restoration arrangements were not finalized. Instead, the owners of TAT-12/13 made available to PTAT a daily, on-demand restoration on TAT-12/13. AT&T notes that PTAT has not used this restoration arrangement, or been charged for it, since 1996. *Id.* at 5-6.