

Coordination is necessary to avoid harmful interference, and notification to participants of limited market studies is necessary to indicate that the experiment is temporary.

List of Subjects in

47 CFR Part 5

Radio.

47 CFR Part 90

Communications equipment, Radio.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

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47 CFR Part 63

[IB Docket No. 96-261, FCC 96-484]

International Settlement Rates

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: On December 19, 1996, the Federal Communications Commission released a Notice of Proposed Rulemaking ("NPRM") that proposes changes to the Commission's international settlement benchmark rates that will move settlement rates closer to the underlying costs of providing international termination services. The Commission believes that proposals made in the NPRM are necessary in light of the significant changes that have occurred in the global telecommunications market in recent years. The NPRM represents the next step in an ongoing effort by the Commission, many foreign governments, and multilateral organizations such as the International Telecommunications Union ("ITU") and the Organization for Economic Cooperation and Development ("OECD") to lower international telephone costs by reforming the international accounting rate system.

DATES: Comments are due on or before February 7, 1997, and reply comments are due on or before March 10, 1997.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathryn O'Brien, Attorney-Advisor, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418-1470.

SUPPLEMENTARY INFORMATION:

Summary of Notice of Proposed Rulemaking

1. On December 19, 1996, the Commission released a Notice of Proposed Rulemaking in the Matter of International Settlement Rates, IB Docket No. 96-261 (FCC 96-484) that proposes options for revising international settlement rate benchmarks that will move settlement rates closer to the underlying costs of providing international termination services. The NPRM seeks comment on several alternate methods for calculating benchmark rates in the absence of reliable data on the costs foreign carriers incur to terminate international traffic. The method proposed in the NPRM relies on the three network elements identified by the ITU to provide international service: international transmission facilities, international switching facilities, and national extension (domestic transport and termination). Benchmarks would be developed using foreign carriers' tariffed prices to calculate, on a country-by-country basis, a price for each of these three network elements. The prices for each network element would be aggregated to calculate a "tariffed components price" for each country.

2. The NPRM proposes three benchmark ranges, based on a country's level of economic development under the World Bank and ITU's classification scheme—high income countries (GNP per capita of \$8,956 or more); upper middle and lower middle income countries (\$726-8,955); and low income countries (\$726 or less). The NPRM combines the two middle income categories because the proposed method of calculating benchmark rates would result in benchmarks that are almost identical. The proposed rule would base the upper end of the range for each development category on an average of the prices of the three network elements (or the tariffed components prices) for all countries in that category. This would result in upper ranges of approximately 15¢ for carriers in high income countries; 19¢ for carriers in upper middle and lower middle income countries; and 23¢ for carriers in low income countries. For the lower end of each development category's benchmark, the NPRM proposes using an estimate of the incremental cost per minute of terminating international traffic. The NPRM estimates that this cost would be between 6¢ to 9¢. The NPRM also asks for comment on other alternative methodologies for setting benchmark rates.

3. The NPRM recognizes the potential adjustment problems for foreign carriers that could result from an immediate shift to more cost-based settlement rates. The NPRM therefore proposes a transition schedule for negotiating settlement rates within the benchmark ranges based on countries' levels of economic development. The NPRM proposes a one year transition schedule for U.S. carriers negotiating with carriers in upper income countries; a two year schedule for middle income countries; and a four year schedule for low income countries. The NPRM proposes, though, to consider additional flexibility in the application of the benchmarks beyond this transition schedule for U.S. carriers serving low income and middle income countries that demonstrate an actual commitment to introducing competitive reforms. Under the proposed rule, the Commission would consider carrier-initiated requests for additional flexibility on a case-by-case basis.

4. The NPRM proposes to place conditions on various types of authorizations to provide U.S. international services in order to address potential competitive distortions in the U.S. market for international services that could result from above-cost settlement rates. The NPRM first proposes to condition a carrier's authorization to provide facilities-based service to an affiliated market on the foreign affiliate offering all U.S. international carriers a settlement rate within the benchmark range. Under the proposed rule, the Commission could, if it subsequently learned that the carrier's service offering has caused a distortion of competition on the route in question, require that settlement rates on that route be no more than the lower end of the benchmark range, or could revoke the authorization of the carrier to serve the affiliated market. Second, the NPRM proposes to grant all carriers' applications for resale of private lines to provide switched service on the condition that accounting rates on the route or routes in question are within the benchmark range. The proposed rule would allow the Commission, if it learned that competition on the route was being distorted, to order all authorized U.S. private line resale international carriers not to use their authorization to provide international private line resale services until settlement rates on that route are at the low end of the benchmark range. The NPRM also seeks comment on whether the benchmark conditions should be used in conjunction with the

Commission's effective competitive opportunities ("ECO") test adopted in its *Foreign Carrier Entry Order*, should replace the ECO test, or whether the Commission should modify the ECO test in light of the benchmark conditions.

5. The NPRM seeks comment on several measures to support U.S. carriers' efforts to negotiate lower settlement rates and identifies additional, stronger measures that may be necessary to reduce settlement rates with foreign carriers that have strongly resisted such reductions. The NPRM also asks how the Commission should encourage U.S. carriers to reflect any reductions they receive in their settlement rates. Initial Regulatory Flexibility Analysis

6. Initial Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1990, 5 U.S.C. §§ 601–612, the Commission's Initial Regulatory Flexibility Analysis with respect to the NPRM is as follows:

A. Reason for Action

The NPRM seeks comment on possible changes in the benchmark ranges applied to settlement rates for international message telephone service between U.S. facilities-based carriers and foreign carriers and related issues. The Commission believes that its benchmark rates should be revised to reflect recent technological improvements, their associated cost reductions, and the market structure changes occurring in the global telecommunications market. The Commission also believes these revisions are necessary to move settlement rates closer to the actual costs incurred by foreign carriers to terminate international traffic.

B. Objectives

The objective of this proceeding is to attain reform in the international accounting rate system and thereby help ensure lower international calling prices for consumers. In particular, this proceeding seeks to remove the primary obstacle to accounting rate reform—the anticompetitive effects of substantially above-cost settlement rates. The Commission would achieve this objective by revising its benchmark settlement rates so that they more closely resemble the underlying costs of

providing international termination services.

C. Legal basis

The NPRM is adopted pursuant to Sections 1, 4(i), 201–205 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201–205, and 303(r).

D. Description, Potential Impact, and Number of Small Entities Affected

The Commission has not developed a definition of small entities applicable to international facilities-based common carriers. Therefore, the applicable definition of small entity is the definition under the Small Business Administration ("SBA") rules applicable to Communications Services, Not Elsewhere Classified. This definition provides that a small entity is expressed as one with \$11.0 million or less in annual receipts. Based on preliminary 1995 data, at present there are 29 international facilities-based common carriers that qualify as small entities pursuant to the SBA's definition. The number of small international facilities-based common carriers has been growing significantly, and by the end of 1996 that number could increase to approximately 50. The revised benchmark rates would apply to all international facilities-based common carriers, including small entities, that enter into an operating agreement with a foreign carrier that provides for the payment of settlement rates. The Commission notes that the revised benchmark rates should result in lower settlement rates for carriers. After evaluating the comments in this proceeding, the Commission will further examine the impact of any rule changes on small entities and set forth findings in the Final Regulatory Flexibility Analysis. The Secretary shall send a copy of the NPRM to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601, *et seq.* (1981).

E. Reporting, Recordkeeping and Other Compliance Requirements

None.

F. Federal Rules Which Overlap, Duplicate or Conflict With the Commission's Proposal

None.

G. Any Significant Alternatives Minimizing Impact on Small Entities and Consistent With Stated Objectives

NPRM solicits comments on a variety of alternative methodologies for calculating benchmark settlement rates, but these have no impact on small entities. The NPRM also solicits comments on enforcement mechanisms that may be necessary to support U.S. carriers, including small entities, in their negotiations with foreign carriers. The Commission seeks comment on the impact of these alternatives on small entities.

H. Comments are Solicited

Written comments are requested on this Initial Regulatory Flexibility Analysis. These comments must be filed in accordance with the same filing deadlines set for comments on the other issues in the NPRM, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of the NPRM to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. § 601, *et seq.*

Ordering clauses

7. Accordingly, it is ordered that, pursuant to Sections 1, 4(i), 201–205, and 303(r) of the Communications Act of 1994, as amended, 47 U.S.C. §§ 151, 154(i), 201–205, and 303(r) a notice of proposed rulemaking is hereby adopted.

8. It is further ordered that the Secretary shall send a copy of this notice of proposed rulemaking, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 43

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

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