



PUBLIC NOTICE

Federal Communications Commission
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PETITION FOR WAIVER OF THE BENCHMARK SETTLEMENT RATE FOR DEMOCRATIC REPUBLIC OF CONGO

ISP-WAV-20030820-00022

Link Africa B.V. (Link Africa), a wholly-owned subsidiary of Mobile Systems International Cellular Investments Holdings B.V. (MSI Group), has filed a petition for waiver of the Commission's benchmark settlement rate of 23¢ per minute for service between the United States and the Democratic Republic of Congo (DRC). Link Africa is an international carrier that provides international telephone service to and from 15 African countries, including the DRC, where Link Africa is a correspondent of AT&T Corp. and MCI for terminating U.S.-originated traffic into that country.

The Commission has repeatedly expressed concern about above-cost accounting rates because such rates harm U.S. consumers and may produce market distortions. The Commission adopted the *Benchmarks Order* to ensure that U.S. consumers pay reasonable rates for international telephone service and to reduce the distortions that may result from above-cost accounting rates.¹ The *Benchmarks Order* establishes a set of benchmark settlement rates and requires U.S.-authorized facilities-based carriers to negotiate settlement rates that comply with the benchmarks rates in accordance with a transition schedule. The benchmark settlement rates and the transition schedule vary primarily according to countries' per capita income levels. For carriers in countries classified as low income countries, which includes the DRC, the Order requires U.S.-authorized carriers to use a settlement rate that does not exceed 23¢ per minute for the purpose of settling telephone traffic after January 1, 2002.

Link Africa states that, on January 25, 2003, the government of the DRC mandated that, effective March 1, 2003, all carriers operating within the DRC must settle

¹ *International Settlement Rates*, IB Docket No. 96-261, Report and Order, 12 FCC Rcd 19,806 (1997) (*Benchmarks Order*); Report and order on Reconsideration and Order Lifting Stay, 14 FCC Rcd 9256 (1999) (*Benchmarks Reconsideration Order*); *aff'd sub nom. Cable & Wireless P.L.C. v. FCC*, 166 F.3d 1224 (1999).

inbound international telephone calls on the basis of a 20¢ per minute minimum settlement rate. Specifically, the petition states that the DRC government has imposed the 20¢ per minute settlement rate to fund the rapid establishment of a national telephone network in the DRC.

Link Africa argues that the 03¢ margin between the minimum settlement rate mandated by the government of the DRC and the FCC-mandated 23¢ per minute benchmark rate is insufficient for Link Africa to recover its costs. Link Africa states that, as a satellite-based niche carrier, it bears the burden of upfront investment in satellite equipment and has what it characterizes as above average operating expenses needed to operate its existing engineering- and labor-intensive network facilities from and to Africa. For this reason, Link Africa requests that the Commission permit a temporary waiver of the 23¢ per minute benchmark rate and allow it to set a settlement rate of 26¢ per minute that it asserts will allow it to recover its costs. Link Africa argues that, without grant of a waiver, it would have to cease terminating inbound international telephone calls to the DRC and that U.S. carriers would be forced to rely for call termination on Voice over IP or “grey market” operators that circumvent the mandated 20¢ per minute settlement rate.

Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before October 27, 2003, and reply comments on or before November 10, 2003. Any filings should reference the file number of this proceeding. An original and four copies of all pleadings must be filed in accordance with Section 1.51(c) of the Commission's rules, 47 C.F.R. § 1.51(c).

If filed by hand delivery, the Commission's contractor, Vistrionix, Inc., 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.

If filed by mail, the following procedures should be followed: 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 mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

In addition, one copy of each pleading must be sent to each of the following:

- (1) The Commission's duplicating contractor, Qualex International, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: qualexint@aol.com; facsimile: (202) 863-2898; phone: 202 863-2893;
- (2) Cynthia Bryant, Policy Division, International Bureau, 445 12th Street, S.W., Room 7-A623, Washington, D.C. 20554; e-mail: Cynthia.Bryant@fcc.gov