January 24, 2003

Ms. Gloria Blue
Executive Secretary, TPSC
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

VIA ELECTRONIC TRANSMISSION

Re: USTR Section 1377 Request for Comments Concerning Compliance with Telecommunications Trade Agreements

Dear Ms. Blue:

Vodafone Americas, Inc., on behalf of itself and Vodafone Group Services, Ltd ("Vodafone"), is pleased to have this opportunity to submit a brief reply to the comments submitted on the operation and effectiveness of U.S. telecommunications trade agreements pursuant to Section 1377 of the Omnibus Trade and Competitiveness Act of 1998 (19 U.S. C. Section 3106).

Vodafone is the world's mobile telecommunications leader, with interests in mobile operators in 28 countries worldwide, serving over 270 million customers.[1] In the United States, Vodafone has a 44.2% interest in Verizon Wireless. Vodafone's reply is limited to issues regarding countries in which it has an investment interest.

[1] A complete list of the markets in which Vodafone has interests in mobile operators is attached as Annex A to the FCC Comments. In most countries Vodafone is not affiliated with the fixed incumbent.

I. Mobile Termination in Europe

The comments submitted include statements by CompTel regarding mobile termination rates in various markets, including certain European markets where Vodafone has an interest.[2] As the USTR is aware, questions regarding mobile termination have also been raised by the Federal Communications Commission ("FCC").[3] On 14 January 2003, Vodafone submitted comments in that proceeding; we are including those comments here as well for reference.

In this proceeding, CompTel raises the concern that mobile termination rates in a number of European markets are not 'cost-oriented.' Vodafone agrees that the question of whether prices are 'cost-oriented' is arguably relevant to the 1377 proceedings because of, *inter alia*, provisions in the Reference Paper to the General Agreement on Trade in Services (GATS) that would apply assuming *arguendo* that mobile carriers are considered 'major suppliers' of interconnect services. For example, Section 2.2 of the Reference Paper provides that interconnection provided by 'major suppliers' - those deemed to have essential facilities - is to be ensured on 'cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled.'

But as Vodafone explains in its comments to the FCC, foreign regulators are actively involved in assessing questions related to mobile termination rates, and are therefore being attentive to their obligations under relevant trade agreements with respect to this issue. Appendix B to Vodafone's FCC Comments outlines the extensive nature of regulatory proceedings in this area, for the markets where Vodafone has investment interests. While the derivation of efficient mobile termination prices is a complex task to which many regulators are committing considerable resources, intervention on mobile termination rates in overseas markets is already pervasive.

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[2] AT&T also raises concerns with respect to mobile termination rates in Argentina and Peru, markets where Vodafone does not have an investment interest.

[3] *In the Matter of International Settlements Policy Reform,* <u>Notice of Proposed Rulemaking,</u> IB Dockets No. 02-234, and No. 96-261, FCC 02-285, ¶¶ 45-51 (rel. October 11, 2002).

Moreover, mobile termination rates in these countries are generally decreasing. In Europe generally, mobile termination rates have declined by around 10% over the last year.[4] In Italy, to list one example, Vodafone Omnitel has reduced fixed to mobile termination rates 40% since 1999. These reductions have been achieved through a mechanism defined by the national regulator. The national regulator (AgCom) is currently working on finalizing another resolution, based on the recent changes in relevant EU directives regarding telecommunications regulation. Vodafone provides specific relevant data on declines in mobile termination prices (and a comparison of such declines to US carriers' mobile surcharges) in Annex C to its FCC Comments. That Annex is a report from an independent consultancy (Ovum) comparing termination, settlement and collection charges for calls to mobiles in selected European markets.

Finally, the argument that mobile termination rates in foreign countries indicate non-compliance with the Reference Paper is often presented too simplistically to allow for meaningful evaluation; this is true of CompTel's submission here. The claim that call termination rates are not "cost oriented" because they differ in any degree from prices (or costs) for fixed network termination is particularly misleading and inaccurate. This is for two basic reasons: a) fixed networks have significantly lower costs for termination; b) fixed network services are provided in a significantly different environment in terms of demand conditions and competitive incentives.

So far as we are aware, all regulators who have examined the cost structures of mobile networks in detail recognize that mobile networks have substantially different cost drivers to fixed networks, that mobile operators incur costs which are not incurred in fixed networks (such as spectrum fees and the costs of providing mobility and handover), and that traffic levels on mobile networks (at least in developed markets) generally remain lower than fixed. These differences should be expected to produce cost oriented mobile termination rates that are substantially higher than cost oriented fixed interconnection rates.

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[4] *See Seventh Report on the Implementation of the Telecommunications Regulatory Package*, Section 4.2.2 ‘Interconnection – call termination in mobile networks’, p.16.

Also, in Calling Party Pays ("CPP") markets the price structures by which costs are recovered efficiently are understandably going to differ significantly from those used in Receiving Party Pays ("RPP") markets such as the U.S. But that difference cannot by itself sustain a claim that termination prices are not 'cost-oriented.'

A more accurate way to assess the question of whether rates are "cost-oriented" would be to ask whether regulators permit call termination rates to both recover marginal costs (or their appropriate proxy, e.g., LRIC) and to also make a disproportionate contribution to the common costs of the mobile business, or if such charges make a contribution to costs which were inefficiently incurred. Vodafone believes that there is no evidence of such practices, properly understood.

Vodafone concedes that, in many jurisdictions, information about which prices recover costs efficiently is still forthcoming and, as noted above, this work is ongoing.[5] But glib comparisons to irrelevant data points such as fixed network prices (or costs) or mobile rates in non-CPP markets are entirely inadequate for purposes of addressing whether parties are meeting obligations to see that interconnect rates are "cost-oriented."

II. Mexico

As an investor in Grupo Iusacell, a Mexican mobile telephone provider, Vodafone is aware of - and agrees with - a number of the observations made by other commenting parties regarding Mexico's present regulatory structure.

For example, as USCIB notes, effective regulatory enforcement to prevent anti-competitive practices, as is required by Section 1.1 of the Reference Paper, is long overdue in Mexico. Vodafone shares the concerns of those who observe that the problems in this regard are due in part to the very structure of the Mexican legal and regulatory apparatus, and agree that proposals to strengthen the authority of the telecoms regulator (COFETEL) - such as those proposed in the Parliamentary

[5] Vodafone has announced its intent to seek judicial review of the UK Competition Commission's recent decision on mobile termination rates in the UK, summaries of which were published on 22 Jan 2003. See http://www.oftel.gov.uk/publications/mobile/2003/ctm_index_0103.htm

Conference's draft legislative proposal of last year - would be a positive step in this regard.

Vodafone is conscious that the USTR is well aware of this situation and is taking steps to address it, including through the WTO dispute resolution process.[6] Vodafone supports these efforts and will monitor these proceedings with interest.

We appreciate the opportunity to contribute to this process and look forward to continued discussion on telecommunications matters. Please contact myself or Barbara Phillips should you wish further information on these issues.

Best regards,

/s/_____________________

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[6] See, e.g., *Mexico – Measures Affecting Telecommunications Services*, First Written Submission of the United States (WT/DS204) October 3, 2002, at p.71

ATTACHMENT

(in Adobe Acrobat format)