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January 5, 2004

Ms. Gloria Blue
Executive Secretary
Trade Policy Staff Committee
ATTN: Section 1377 Comments
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

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

Dear Ms. Blue:

On behalf of AT&T Corp. ("AT&T"), I am pleased to respond to the request of the United States Trade Representative ("USTR") for comments pursuant to Section 1377 of the Omnibus Trade and Competitiveness Act of 1988, 19 U.S.C. Section 3106, concerning implementation of the World Trade Organization ("WTO") Basic Telecommunications Agreement.

AT&T greatly appreciates USTR's important work to encourage WTO Members to meet their commitments in basic telecommunications and value-added network services under the WTO General Agreement on Trade in Services ("GATS"). USTR's efforts to ensure compliance with those commitments have improved foreign market opportunities for the U.S. telecommunications industry. For this year's Section 1377 review, AT&T highlights the significantly above-cost rates charged to U.S. carriers to terminate international calls on wireless networks in many countries, which clearly violate WTO requirements for cost-oriented and reasonable termination rates. AT&T is also very concerned by continuing market access barriers in India and Mexico, which are also contrary to these countries' WTO obligations.

Excessive Mobile Termination Rates: Many of the rates that U.S. carriers pay to terminate calls on foreign mobile networks are significantly above-cost and continue to increase to even higher levels. This fast-growing problem threatens to reverse progress toward

cost-based international termination rates in the markets of many U.S. trading partners. Just in the last two years, the number of countries in which AT&T is required to pay additional mobile surcharges (*i.e.*, in addition to the fixed termination rate) to its foreign correspondents has increased threefold -- from approximately 30 countries in 2001 to approximately 90 countries today. In approximately 40 countries, the rates paid to terminate international calls on mobile networks exceed the 1997 FCC Benchmark rate, which is conservatively set far above current cost ceilings. These high termination fees inflate the settlement payments of AT&T and other U.S. carriers and cause higher prices to U.S. consumers.

The rapidly increasing volume of U.S.-outbound international calls terminated on foreign mobile networks exacerbates the adverse effect of high mobile termination rates. Global mobile subscribership and mobile traffic volumes are increasing at a very rapid rate. *TeleGeography* reports that mobile lines now comprise a majority of global lines.[1] Annual global growth in mobile subscribers is estimated at more than 50 percent in recent years, and annual global growth in mobile traffic is estimated at almost 70 percent.[2] As a result, the percentage of international traffic terminating on mobile phones is also growing. Indeed, twenty-five percent of the world's total incoming international traffic is now terminated in this way.[3]

The rates to terminate traffic on a foreign mobile network are frequently far higher than the rates to terminate traffic on a fixed network in the same foreign market, including in otherwise competitive countries where wireline interconnection prices are often below $0.02/minute. The most recent EC Implementation Report notes that fixed-to-mobile termination charges in EU Member States remain on average *9 times* higher than the average fixed-to-fixed termination charge, and in some countries the pricing gap in termination rates between fixed and mobile networks is even more extreme.[4] Indeed, mobile calls account for only about 30 percent of Western European countries' incoming international traffic, but represent 80 percent of their total cost of terminating all international traffic.[5]

Even if generous assumptions are made about the costs of mobile technology, infrastructure and any absence of economy of scale efficiencies, there is no legitimate

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1 *TeleGeography 2004*, *International Voice Carriers and Traffic, Mobiles*.

2 *TeleGeography 2002, International Traffic To and From Mobile Phones*. *See also*, *Global Mobile Users Hit 1 Billion Mark*, Total Telecom (Nov. 6, 2002) (Baskerville Group's Global Mobile Subscriber Database estimated June 2002 year-on-year global subscriber growth at 22.23 percent).

3 *TeleGeography 2004 International Voice Carriers and Traffic, Mobiles*.

4 *INTUG, Termination of International Calls to Mobile Networks, Submission by INTUG to ITU-T SG3*, (June 2002), at 3-7 (citing Arbinet April 2002 data showing mobile international termination rates exceeding fixed network termination rates in the Netherlands by 1428.8 percent, Sweden by1344.4 percent, Australia by 794.1 percent, Japan by 470.2 percent, and Chile by 424.0 percent).

5 *Id.*

justification for the difference between fixed and mobile termination rates.[6] These high mobile termination rates are clearly unreasonable and far exceed cost-oriented levels, which LRIC-based studies in the United States and the UK have estimated to range between $0.04 and $0.07/minute.

Market forces do not – and cannot – provide any constraint on these high fees, which are the direct result of the market power of mobile network operators in countries where the Calling Party Pays ("CPP") system is employed. Under CPP, the person who initiates the call to the mobile phone pays the mobile operator for the mobile termination, while the called party, who is a customer of the mobile operator, is not charged for the termination. Because the consumer who subscribes to the CPP mobile operator is not the same consumer who pays the CPP mobile operator for call termination, there is no market constraint on CPP mobile operators to reduce high call termination fees.[7] In CPP countries, there is a distinct market for call termination on each mobile network, and CPP mobile operators accordingly have market power in those markets and are therefore "major suppliers" under the WTO Reference Paper.

A CPP mobile operator plainly has "the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for basic telecommunications services as a result of: (a) control over essential facilities; or (b) use of [their] position in the market," as required by the Reference Paper. Indeed, foreign mobile operators amply demonstrate their "ability to affect the terms of participation" in the relevant market when they set international mobile termination rates at unreasonably high levels. Similarly, because foreign mobile operators control all call termination on their networks, resistance to requested rate increases carries the risk of service-affecting retaliatory action including the blocking of calls.

AT&T is particularly concerned by the excessive mobile termination rates in the following countries, which are clearly contrary to WTO requirements for the interconnection of U.S.-outbound international calls to mobile operator networks in these countries at cost-oriented and reasonable rates. All the mobile rates listed below are many times greater than the rates paid to terminate U.S.-outbound calls on fixed networks in these countries without any cost justification for these higher charges.

Australia: The Australian Competition and Consumer Commission ("ACCC") determined in late 2002 that CPP mobile operators have the incentive and ability to maintain

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[6] *See* Ovum, *Mobile Termination Rates*, at 14-16 (2000).

[7] There is no effective demand-side substitute for the calling party or the called party, because the potential substitutes (*e.g.*, placing calls to fixed rather than mobile lines, sending short text messages rather than voice calls, or utilizing call-back services) would undermine the quality and convenience factors that create demand in the broader mobile market. There also is no effective supply-side substitute, which would require a competing operator to have access to the details of the end user's SIM card, and the mobile operator can simply refuse to share this information with other operators.

above-cost termination rates.[8] Unfortunately, since then there has been no meaningful reduction in the rate to terminate international mobile traffic with correspondents in Australia of approximately $0.17 -- which is more than ten times higher than rates paid to terminate calls on fixed networks in Australia -- and there have even been attempts to raise this mobile rate over the past year. The ACCC currently has a pending proceeding to review its regulation of mobile termination rates,[9] and should act expeditiously to ensure that Australia's mobile termination rates are reduced to cost-oriented levels in compliance with its WTO obligations.

Greece: In 2002, the Greek regulator EETT determined that mobile operators CosmOTE and Vodaphone Panafone have significant market power, but has failed to ensure that these operators provide cost-oriented termination rates. Indeed, Greece's incumbent international operator, OTE, which is affiliated with CosmOTE, has significantly raised its mobile termination charge over the past two years by more than fifty percent, from approximately $0.16 in January 2002 to over $0.24 in December 2003. In January 2004, CosmOTE and Vodaphone Panafone have announced an intention to reduce mobile termination charges by a small amount, but notwithstanding this welcome apparent change in trend, far greater reductions are required to lower rates to cost-oriented levels.

New Zealand: Mobile termination rates in New Zealand are among the highest in the Asia Pacific region at approximately $0.23, which is more than fourteen times higher than the rates paid to terminate calls on fixed networks in New Zealand. Further, New Zealand's international operators have indicated that they may increase these rates to even higher levels. The reduction of mobile termination charges in New Zealand would not only bring immediate benefits to New Zealand and its WTO trading partners, but would also set an important example to several other South Pacific Island nations that look closely to New Zealand for regulatory and commercial trends. However, the Commerce Commission of New Zealand has taken no formal action to reduce these charges.

Switzerland: The Swiss Competition Commission, WEKO, launched an investigation in late 2002 over concerns that Switzerland's three major mobile operators had an arrangement to artificially fix prices for mobile termination. However, this investigation remains unresolved while mobile termination rates in Switzerland are among the highest in Europe. Rates to terminate U.S.-outbound calls on mobile networks in Switzerland have steadily increased over the past two years from approximately $0.22 in January 2002 to more than $0.30 at present.

AT&T also wishes to highlight the following market access barriers in Mexico and India, which are contrary to these countries' WTO commitments.

Mexico: The $14B telecommunications market in Mexico has significant potential for growth, but is being harmed by the many barriers remaining to telecommunication

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[8] ACCC, *Pricing Methodology for the GSM and CDMA Termination Service*, at 3-4 (rel. Sept. 2002).

[9] ACCC, *Mobile Services Review 2003, Discussion Paper* (rel. Apr. 2003).

competition in Mexico. Mexico acknowledged the importance of open markets by making WTO commitments, which, if fully implemented, would allow effective competition to flourish. Although these commitments became effective in 1998, Mexico has not implemented them and continues to maintain barriers to competition. These barriers both affect U.S. interests and deprive Mexican citizens of the benefits of competition. Competition in Mexico will provide benefits to customers and carriers in both countries with lower prices and through the introduction of new and innovative services.

There are numerous barriers to competition in Mexico that should be removed to bring Mexico toward compliance with its WTO obligations.

Cross-border Issues: To date, Mexico has not taken the steps necessary to establish a competitive international telecommunications marketplace in accordance with its WTO obligations. AT&T is very pleased to see press reports that a WTO dispute settlement panel has agreed that Mexico has not implemented its telecommunications trade commitments concerning international services, and AT&T hopes that Mexico will at long last take the necessary action to comply with these obligations. However, major problems also remain to be resolved concerning Mexico's failure to allow fully open markets in domestic services.

Interconnection: Mexico has failed to ensure the availability of cost-oriented interconnection arrangements with Telmex, its major supplier, as required by Section 2.2 of the Reference Paper.

On-Net Interconnection: For interconnection of domestic long distance calls to Telmex's network in a city where a new competitive carrier has a network, Cofetel allows Telmex to charge competitive carriers 0.975 cents per minute for 2003 interconnection, without cost-justification. In addition, long distance carriers must pay a call attempts surcharge (2.85% of the interconnection charge) and 0.53 cents per interconnection minute for special projects, resulting in a net payment of 1.53 cents per minute. Similar long-distance interconnection in competitive countries is routinely available for about one cent per minute.

Off-Net Interconnection: For interconnection of long distance calls to Telmex's network for cities that Telmex has refused to open to competition or that are otherwise not subject to equal access interconnection arrangements, or for cities where a new competitive carrier does not have a network, Telmex charges that competitive carrier a "resale" tariff rate. The resale rate is currently about 8 cents per minute, about four times the level of a cost justified rate. The resale rate is based, without cost-justification, on a 25% discount from Telmex's commercial rates to customers. Similar regional interconnection is routinely available in competitive countries for 2 to 3 cents per minute.

Local Interconnection: Mexico has failed to ensure timely, non-discriminatory, cost-based interconnection for local competitors. Although Telmex has recently provided interconnection to several carriers, Telmex has imposed several restraints to prevent full and fair competition. For example, local number portability is not provided, despite the requirements of Mexican law. In addition, Telmex has imposed a discriminatory "bill and keep" system that

excludes data traffic that benefits only Telmex. The lack of interconnection quality standards results in routing and programming failures for competitors' local service traffic.

Anti-Competitive Practices: Mexico has failed to maintain appropriate measures to prevent anti-competitive practices by Telmex, as required by Mexico's commitments under Section 1 of the Reference Paper. Mexico has failed to set competitive safeguards and Cofetel has failed to enact dominant carrier regulation, even though it has the ability to do so. Enforcement of dominant carrier safeguards is long overdue in Mexico. Telmex has denied competitors phone lines needed to provide service, priced its own services at predatory rates, refused to allow other carriers to interconnect to its network, and has withheld fees it owes competitors. Furthermore, Mexico allows Telmex to offer DSL services while excluding its competitors by refusing to unbundle the local loop, even for bit stream access.

Similarly, Mexico has not enforced its regulations requiring Telmex to offer a billing and collection service to its competitors under non-discriminatory terms and conditions. Telmex has refused either to provide such requested services or to disclose the terms and conditions under which it provides such services to its affiliates. Cofetel has not responded to numerous complaints filed as early as 1997.

Prohibition on Foreign Control: Mexico should eliminate its prohibition on foreign control of Mexican "concessionaires" (facilities-based carriers), which also is contrary to Mexico's WTO obligations.

India. In January 2003, India's telecommunications regulator, the TRAI, implemented an Access Deficit Charge ("ADC") in connection with its Telecommunications Interconnection Usage Charge (IUC) Regulation, 2003. The TRAI has stated explicitly that although implemented as part of the IUC Order, the ADC is not an "interconnection charge," which is defined separately in the order as comprising termination or origination charges and carriage charges. Rather, the ADC is a supplemental collection to subsidize socially desirable services, and the TRAI clearly presents the ADC as a component of its overall Universal Service regime.[10]

Many industry participants raised serious concerns with the proposed ADC, and in particular with the high ADC applied to international long distance traffic of 5.0 Rupees ($0.104), which was between two and ten times higher than the ADC rates for domestic long

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[10] *See, e.g.*, TRAI, *The Telecommunication Interconnection Usage Charges (IUC) Regulation, 2003 (1 of 2003)* (rel. Jan. 24, 2003), at Explanatory Memorandum, ¶ 5. ("The Access Deficit Charge (ADC) is assessed by fixing an affordable level for rental/local call charges, special concessionary local call charges in the rural areas, provision of free calls, and any other below cost tariffs that the Regulator may need to specify to make the Basic telecom services affordable to the common man to promote both Universal Service and Universal access as per NTP'99"); *TRAI, The Telecommunication Interconnection Usage Charges (IUC) Regulation, 2003 (2 of 2003)* (rel. Oct. 29, 2003) at Explanatory Memorandum, ¶ 89 ("Further, the ADC regime should ideally be merged with the USO regime over time, say in about 3 to 5 years.").

distance traffic (R0.50 to R2.50 depending on distance). In response, the TRAI re-opened the IUC Consultation in May 2003, and issued a revised Regulation in October 2003. While the new regulation offers some limited structural improvements on the ADC component, it still relies on an imprecise calculation of the access deficit to be recovered and continues to place a highly unreasonable and discriminatory burden on international service providers and their customers. The revised international ADC is 4.25 Rupees ($0.093) -- which is as much as *fourteen* times higher than the ADC rates for domestic long distance traffic (R0.30 to R0.80 depending on distance).

India's ADC regime fails to comply with its WTO commitment to administer universal service obligations in a transparent and non-discriminatory manner.[11] There is no justification for the higher ADC rates for international calls, which impose the same costs on the local network as domestic long-distance calls, nor does TRAI assert any cost-based justification in its orders. The TRAI also fails to administer this universal service obligation in a transparent manner and thus provides no assurance that any claimed access deficit is properly calculated or that any ADC receipts are used solely to subsidize legitimate services and for no anticompetitive or improper purpose.

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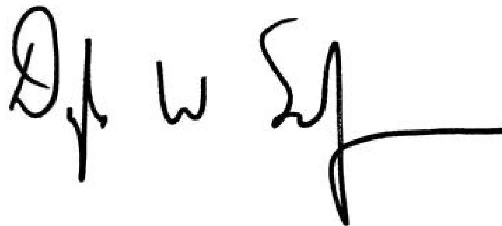
AT&T would be pleased to provide any further information that would be helpful to the Committee.

Respectfully submitted,



Douglas Schoenberger

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[11] World Trade Organization, Fourth Protocol to the General Agreement on Trade in Services, *India – Schedule of Specific Commitments Supplement 3, Reference Paper* at ¶ 3. (April 11, 1997).