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BY ELECTRONIC MAIL

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
fr0405@ustr.gov

Re: 2004 Section 1377 Review—Reply Comments

Dear Ms. Blue:

AT&T Wireless Services, Inc. (“AWS”), hereby responds to the December 8, 2003, Federal Register notice of the Office of the United States Trade Representative (“USTR”) requesting comments on U.S. trading partners’ compliance with telecommunications trade agreements,¹ and, specifically, to comments filed in this proceeding by AT&T Corp. and its trade association, the CompTel/Ascent Alliance (“CompTel/ASCENT”)²

AWS is one of the largest U.S. mobile carriers. AWS is also a significant U.S. investor in foreign telecommunications markets, with foreign operating subsidiaries currently providing service in Antigua & Barbuda, Bermuda, Saint Lucia, and St. Vincent and the Grenadines.³

¹ See 68 Fed. Reg. 68,444 (Dec. 8, 2003); Section 1377 of the Omnibus Trade and Competitiveness Act of 1988, codified at 19 U.S.C. § 3106.

² Letter from Douglas Schoenberger to USTR Executive Secretary Gloria Blue (Jan 5, 2004) (“AT&T Corp. Comments”); Letter from Carol Ann Bischoff to USTR Executive Secretary Gloria Blue (Jan. 7, 2004) (“CompTel/ASCENT Comments”).

³ AWS also holds a number of substantial investments in foreign wireless carriers, including carriers in Canada and India.

Shortly, AWS will begin providing service through foreign operating subsidiaries in Barbados, the Cayman Islands, Curaçao, Dominica, and Grenada.⁴ AWS's foreign operating subsidiaries all compete, or will compete, with the more established foreign mobile carriers and incumbent wireline carriers in their respective markets. AWS therefore benefits greatly from multilateral and bilateral telecommunications-trade agreements, particularly the commitments in basic telecommunications under the WTO General Agreement on Trade in Services ("GATS") and its accompanying WTO Reference Paper.⁵ AWS thus appreciates USTR's continuing efforts to negotiate, expand, and enforce such agreements and the market access and pro-competitive regulation they seek to ensure.

Despite USTR's efforts, however, AWS continues to face significant market barriers and competitive disadvantages due to the monopoly position of Cable & Wireless plc and its subsidiaries ("C&W") in many of those markets. It is against this backdrop that AWS regards the narrow focus of AT&T Corp. and CompTel/ASCENT on foreign mobile termination rates ("FMTRs") to be unfortunate and counterproductive.⁶ AT&T Corp. and CompTel/ASCENT misperceive the nature of the problem they attempt to describe, and thus propose an overbroad and inappropriate remedy that ignores the market structure and state of liberalization of many markets in which U.S. companies seek to compete. In short, the proposals of AT&T Corp. and CompTel/ASCENT, if adopted by USTR, would create greater problems than they would solve. USTR should instead focus on broader interconnection issues, of which FMTRs are but one component.

I. C&W Dictates Interconnection Terms—including FMTRs—to AWS as Part of Take-It-or-Leave-It Interconnection Negotiations in Its Caribbean Markets

Far from having market power to dictate FMTRs, AWS has consistently confronted C&W's take-it-or-leave-it approach to interconnection negotiations—including C&W's unwillingness to negotiate either domestic or foreign mobile termination rates—in order to provide any service at all in C&W's Caribbean markets.

In the wake of the WTO Basic Telecommunications Agreement in 1997, and the subsequent gradual liberalization of telecom markets globally, including the Caribbean,⁷ AWS

⁴ Although AWS's foreign operating subsidiaries are separate legal entities, all operate under the AT&T Wireless brand name.

⁵ WTO Doc. GATS/SC/2/Suppl.1. The original GATS commitments in basic telecommunications, dating from 1997, are of course often known collectively as the WTO Basic Telecommunications Agreement.

⁶ AWS notes that C&W's U.S. affiliate, Cable & Wireless USA, Inc., has long been a member of CompTel, the predecessor of the recently formed CompTel/ASCENT. C&W has announced that it will soon sell the assets of Cable & Wireless USA, Inc., which it has placed into bankruptcy.

⁷ C&W operates in the following independent Caribbean countries: Antigua & Barbuda; Barbados; Dominica; Grenada; Jamaica; St. Kitts & Nevis; St. Lucia; St. Vincent & the Grenadines; and Trinidad & Tobago. C&W also operates in the following British overseas territories in the Caribbean and mid-Atlantic: Anguilla; Bermuda; British Virgin Islands; Cayman Islands; Montserrat; and Turks & Caicos Islands. Of those C&W markets, Antigua & Barbuda, Barbados, Dominica, Grenada, Jamaica, and Trinidad & Tobago have made

has invested significant time, effort, and money to provide competitive mobile services in Caribbean markets previously served only by C&W's mobile affiliates. In each of these markets, however, C&W's local exchange networks and submarine cable facilities remain critical competitive bottlenecks. As the former British colonial telephone and telegraph monopoly, C&W continues to exercise either *de jure* or *de facto* monopoly power in many of the domestic wireline, mobile, and international services markets in the Caribbean. For this reason, AWS recently petitioned the FCC to add numerous C&W affiliates to its List of Foreign Carriers Presumed to Have Market Power in Foreign Telecommunications Markets.⁸

Because C&W controls the international gateway facilities, local exchange facilities, and substantial mobile operations in each Caribbean market in which AWS operates, all traffic originating or terminating on AWS's Caribbean networks must pass through C&W. Even traffic originating from or terminating on other mobile networks (those of C&W's mobile affiliates or others) must pass through C&W's wireline facilities, because there is currently no direct "mobile-to-mobile" interconnection. Similarly, traffic originating internationally must pass through C&W's facilities before terminating on AWS's networks. AWS must therefore negotiate interconnection agreements with C&W in order to complete calls within each Caribbean market, and between those markets and foreign points.

As AWS has explained elsewhere,⁹ C&W continues to use its bottleneck control over interconnection to stymie competition and market entry. The C&W Carrier Services Group, with whom AWS and other new competitors must negotiate interconnection in each C&W market, has from the outset:

specific GATS commitments in basic telecommunications, and all have adopted the WTO Reference Paper. See List of WTO Telecommunications Commitments and Exemptions, http://www.wto.org/english/tratop_e/serv_e/telecom_e/telecom_commit_exempt_list_e.htm. The U.S. Government also takes the position that British overseas territories are subject to U.K. WTO commitments. See *Cable & Wireless USA, Inc., Order, Authorization & Certificate*, 15 FCC Rcd. 3050, 3052 n.14 (Int'l Bur. 2000); Letter from Robert E. Dalton, Assistant Legal Adviser for Treaty Affairs, U. S. Department of State, to Rebecca Arbogast, Chief, Telecommunications Division, International Bureau, FCC, File No. ITC-214-19990709-00412, at 1 (Feb. 16, 2000) (stating that "the WTO Agreement applies to all British territories, including Bermuda and Gibraltar. The Office of the U.S. Trade Representative concurs in this view.").

⁸ See AT&T Wireless Services, Inc., Petition for Declaratory Ruling Regarding the U.S. Federal Communications Commission's List of Foreign Telecommunications Carriers that Are Presumed to Possess Market Power in Foreign Telecommunications Markets, FCC File No. DA 03-3721 (filed July 9, 2003).

⁹ See AT&T Wireless Services, Inc., Barriers to U.S. Exports of Services to, and Overseas Direct Investment in, Markets Dominated by Affiliates of Cable & Wireless plc, and in Barbados (filed Dec. 12, 2003), available at <http://web.ita.doc.gov/otea/ntecomments.nsf/c052b23bbd9b81dc85256df7005f87b7/a55ae68311b1d55285256dff004ac34a!OpenDocument>.

- Failed to provide either to AWS or to the national regulators any substantive details of the interconnection arrangements between itself and C&W's mobile operations, stating instead that it provides interconnection to its mobile affiliate without any agreement at all, thus precluding any examination of whether the C&W Carrier Services Group grants any preferential and discriminatory treatment to its own mobile affiliate;
- Insisted on inclusion in interconnection agreements of an Access Deficit Contribution ("ADC")—a charge intended to "compensate" C&W in situations where a competing carrier accesses C&W's network more than C&W accesses the competitor's network; and
- Failed to respond in a timely manner to AWS's formal requests for initiation of negotiations, substantive comments and proposed revisions to the interconnection agreements, including proposals for interim interconnection agreements to be applied until the conclusion of longer-term agreements, and in some cases, requests for early ordering for interconnection equipment.

In such competitive conditions, it should come as no surprise that C&W attempts to dictate all interconnection terms and rates, including FMTRs, paid to and by AWS. Because it controls access to all other domestic and international parties—including customers of other competitive carriers—through its control over bottleneck local exchange networks and submarine cable facilities, it lacks any incentive to engage in meaningful negotiations. A failure to negotiate the provision of interconnection services means only that C&W is spared of additional competition.

Moreover, because C&W operates region-wide in the English-speaking Caribbean, it has leveraged its position in some markets to extract concessions from competitors in others. For example, the ink had barely dried on AWS's interconnection agreement with the C&W Carrier Services Group with respect to the St. Lucia market when C&W used its preferred language from its proposed interconnection agreement for Dominica to insist on renegotiating the St. Lucia agreement to include terms more favorable to C&W—threatening to delay signing of the Dominica agreement unless AWS acceded to the revision of the St. Lucia agreement. As this example illustrates, AWS faces a Hobson's choice in many Caribbean markets: it can accept C&W's dictated terms for interconnection, or it can abandon the market entirely.¹⁰

¹⁰ Generally, AWS concluded interconnection agreements with C&W only with the extraordinary intervention of the national governments in those markets. Most recently, in December 2003, C&W capitulated only after the Government of Barbados threatened C&W with legislation in order to ensure interconnection with other new mobile carriers, including AWS. Absent such intervention, C&W's delay tactics would likely have thwarted all attempts by AWS to conclude commercially reasonable interconnection agreements.

II. By Focusing on FMTRs in Isolation, USTR Would Hinder Telecommunications-Trade Liberalization by Further Entrenching Vertically Integrated Incumbent Monopolists

In their respective comments, AT&T Corp. and CompTel/ASCENT describe a mobile marketplace very different than that experienced by AWS in the Caribbean. AT&T Corp., in particular, argues that—at least in calling party pays (“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.”¹¹ In other words, AT&T Corp. believes that *every* mobile carrier in *every* CPP market has market power over mobile termination—regardless of a particular country’s telecommunications market structure, state of market liberalization, geography, or any other variable. As such, AT&T Corp. argues, *every* mobile carrier in countries that have adopted the WTO Reference Paper must be subject to the Reference Paper’s interconnection requirements.¹² CompTel/ASCENT’s proposal is less specific: it urges USTR to “consider taking [unspecified] further steps to address mobile termination issues.”¹³

AT&T Corp. and CompTel/ASCENT may accurately describe the competitive landscape in many of the geographic markets they discuss. Their analysis, however, is wholly inapplicable to the Caribbean markets in which AWS competes. Most of the markets cited by AT&T Corp. and CompTel/ASCENT are liberalized, or are at least well along the road to liberalization. Nearly all of these markets have multiple, established and well-capitalized mobile competitors. Perhaps most importantly, nearly all have competitive providers of domestic fixed-line and international services, including competitive access to international gateways and submarine cable facilities. And, not coincidentally, regulators in most of these markets are—as AT&T Corp. and CompTel/ASCENT indicate—already addressing mobile termination issues.¹⁴ This is understandable: because domestic callers originate most traffic terminating on mobile networks, excessive mobile termination charges would harm primarily domestic callers and carriers in the form of higher retail prices for telecommunications services.¹⁵

¹¹ AT&T Corp. Comments at 3 (emphasis added).

¹² AT&T Corp. has also asked the FCC to add *all* mobile carriers in CPP countries to its list of foreign carriers with market power, and to apply existing benchmark rates to all mobile terminating traffic. See AT&T Corp. Comments in FCC Docket No. 02-324 at 34-35 (filed Jan. 14, 2003), available at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6513402530.

¹³ CompTel/ASCENT Comments at 2.

¹⁴ CompTel/ASCENT indicates that regulators in Australia, France, and Peru have recently addressed, or are currently addressing, the issue of (domestic and foreign) mobile termination rates. CompTel/ASCENT Comments at 7, 11, 23. AT&T Corp. indicates that regulators in Australia, Greece, and Switzerland have recently addressed, or are currently addressing, the issue of (domestic and foreign) mobile termination rates. AT&T Corp. Comments at 3-4.

¹⁵ See Reply Comments of AT&T Wireless Services, Inc., FCC IB Docket Nos. 02-234 and 96-261, at 7, (filed Feb. 19, 2003), available at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6513483062.

In markets that have yet to liberalize, however, with vertically integrated international/domestic wireline/mobile carriers, competing carriers clearly have no market power over mobile termination. Mobile termination is but a component of part of a larger interconnection regime dominated and dictated by C&W. And mobile carriers, like AWS, who must accept the terms dictated by vertically-integrated incumbents, plainly lack the “ability to affect the terms of participation” in any market. Such carriers thus cannot realistically be deemed “major suppliers” subject to the WTO Reference Paper’s interconnection rules. In the Caribbean, C&W alone “affects the terms of participation” in all telecommunications markets.

Indeed, CompTel/ASCENT’s comments hint at the key competitive problem in foreign telecommunications markets, namely vertically integrated monopolies with international, domestic wireline, and mobile operations. CompTel/ASCENT cites the situation in Greece, where “Greece’s *incumbent international operator*, OTE, which is affiliated with CosmOTE, has significantly raised its mobile termination charge over the last two years.”¹⁶ Similarly, CompTel/ASCENT states that “New Zealand’s *international operators* have indicated *that they* [the international operators] *may* increase [mobile termination] rates by more than fifty percent.”¹⁷

In seeking to regulate FMTRs in isolation—particularly with the one-size-fits all approach suggested by AT&T Corp. and CompTel/ASCENT—without addressing the more fundamental problem of vertically integrated monopolists and their power to dictate interconnection terms, USTR would only further entrench these incumbent monopolies while providing little if any benefit to U.S. consumers. *First*, by addressing FMTRs in isolation, USTR would actually disadvantage the competitive position of new entrants such as AWS—a U.S. investor—by squeezing those new carriers (which have higher capital and operating expenses as they seek to build out new networks) without affecting the incumbent’s profit margins. Because C&W lacks transparency among its international, domestic wireline, and mobile operations, C&W could recover any lost revenue from reduced FMTRs from the C&W wireline units’ captive rate base or from U.S. interexchange carriers (“IXCs”). AWS could not do so, making the prospect of competing with C&W substantially more difficult, and putting at risk AWS’s business case for operating in those markets. *Second*, because C&W sets the terms of interconnection, including FMTRs, any isolated reduction in FMTRs would simply result in a wealth transfer from competing mobile carriers to C&W. There is certainly no guarantee that C&W would pass along any savings from reduced FMTRs to U.S. IXCs, or that U.S. consumers would see such savings (particularly as U.S. IXCs typically add a mark-up to pass-through charges).

¹⁶ CompTel/ASCENT Comments at 4 (emphasis added).

¹⁷ *Id.* (emphasis added).

III. USTR Should Focus on Broader Interconnection Issues, of Which FMTRs are But One Small Component.

At least in markets such as the Caribbean—with incomplete or nascent liberalization, incumbents with opaque relationships between their wireline and mobile units, and incumbents that control international gateway facilities—the real issue is not so much high FMTRs as it is the market power of the incumbent to dictate the terms of interconnection generally. This problem is only exacerbated where the incumbents are vertically integrated, and where there is a lack of transparency regarding the commercial and financial relationships between the international, local exchange, and mobile operations of those incumbents. AWS believes that addressing the incumbent market power in illiberal or liberalizing markets, rather than addressing FMTRs in isolation in *all* markets, should remain USTR's primary priority.

As discussed above and in AWS's NTE comments, C&W continues doggedly, and often successfully, to use its ability to dictate the terms and timing of interconnection to delay or prevent AWS's entry in the Caribbean. Not satisfied with reaping supracompetitive profits from its interconnection arrangements with AWS, C&W in the past year alone greatly delayed entry of AWS's affiliates in St. Lucia and St. Vincent and the Grenadines, and has delayed AWS's upcoming market launches in Barbados, the Cayman Islands, Dominica, and Grenada.

This conduct, and conduct like it in other illiberal or liberalizing markets, stymies the ability of U.S. investors to compete in foreign telecommunications markets and profit from their investments. It also constrains the ability of U.S. carriers to provide international services and raises rates paid by U.S. consumers. As a U.S. investor and U.S. carrier, AWS therefore urges USTR to enforce existing GATS and WTO Reference Paper obligations, and to pursue additional GATS telecommunications-trade commitments to remedy continuing interconnection problems in Caribbean markets served by AWS.

Respectfully submitted,

/s/

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