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17 December 2004

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

**Re: BANGLADESH, CAMBODIA, EGYPT, GABON, GAMBIA, KENYA,
JORDAN, MAURITANIA, MOROCCO, and TANZANIA:
*WTO General Agreement on Trade in Services***

JORDAN: *U.S.-Jordan Bilateral Trade Agreement*

MOROCCO: *U.S.-Morocco Bilateral Trade Agreement*

VIETNAM: *U.S.-Vietnam Bilateral Trade Agreement*

Dear Ms. Blue:

Pursuant to Section 1377 of the Omnibus Trade and Competitiveness Act of 1988, 19 U.S.C. 3106 ("Section 1377"), IDT Corporation ("IDT") hereby responds to the request of the Office of the United States Trade Representative ("USTR") for comments concerning U.S. trading partners' compliance with U.S. telecommunications trade agreements.

IDT, through its IDT Telecom, Inc. subsidiary, is a leading U.S.-based provider of wholesale and retail telecommunications services worldwide, using its own fiber optic network and infrastructure to route calls worldwide. IDT is international in scope, providing more than 16 billion annual telecom minutes of use, and having over \$1.8 billion in annual revenues. IDT is continually expanding its worldwide presence, employing 3,800 people, with offices in more than 17 countries on five continents. As a large growing international carrier, IDT has greatly benefited from the variety of bilateral and multilateral trade agreements that the United States has entered into over the years. IDT has been able to enter a number of previously closed markets through the bilateral arrangements and direct investment opportunities that arose as a result of the General Agreement on Trade in Services ("GATS") and its associated 1997 WTO Basic Telecommunications Agreement ("GATS Telecom Annex") and Reference Paper on Pro-Competitive Regulatory Principles ("Reference Paper"). IDT is concerned, however, that a

number of countries are not fully abiding by their trade commitments. As discussed below, IDT has experienced difficulties in its ability to secure interconnection with a number of major suppliers in countries such as Bangladesh, Cambodia, Egypt, Ethiopia, Gabon, Gambia, Kenya, Laos, Jordan, Mauritania, Morocco, Tanzania, and Vietnam. Therefore, IDT welcomes the opportunity to bring to the attention of the USTR some of the interconnection trade barriers it has faced as it has sought to expand its presence overseas.

IDT Interconnection Concerns

IDT has worked hard to establish correspondent relationships with carriers throughout the world in order to provide its customers with the best quality service at the best rates available. As a result, IDT has been able to sign interconnection agreements with over a 130 PTT's and Tier One carriers throughout the world. However, IDT has found that real trade barriers exist in certain countries where a dominant carrier controls access to the markets. In each of the countries identified below, IDT has not been able to establish nondiscriminatory and reasonable interconnection agreements with the dominant carrier, despite repeated attempts. In many cases IDT has sought the help of the foreign national government, but to no avail. While these foreign carriers have been willing to enter into interconnection agreements with AT&T and other U.S. carriers, so far they have not agreed to offer IDT reasonable interconnection terms and in some instances have not been available to negotiate. As a result, the countries where these carriers operate should be encouraged to work within the commitments of their trade agreements to ensure reasonable and fair interconnection with their major supplier. IDT therefore urges the USTR to work with its foreign counterparts to encourage these countries to abide by their trade commitments

IDT will divide its comments into two sections. First, IDT will address those countries that have made specific commitments as signatories to the GATS, the GATS Telecom Annex and in some cases the Reference Paper. Last, IDT will address those countries that are not WTO Members, but have made other market opening commitments, and/or are in the process of seeking accession to the WTO.

WTO Violations – *GATS, GATS Telecom Annex and the Reference Paper*

WTO Member Countries are under a general obligation under the GATS to provide “Most Favored-Nation” treatment (“MFN”) to like services and service suppliers from other WTO Members regardless of any other commitments they may have made.¹ This means that WTO Members may not discriminate among the services suppliers of other Members. Therefore, WTO Members should ensure that their national carriers do not discriminate among their correspondents, offering interconnection to some Member Country correspondents, and not others. The GATS Telecom Annex further clarifies these obligations, stating in paragraph 5 that Members must ensure that any service supplier of another Member is accorded access to and use of public telecommunications transport networks and services on reasonable and

¹ General Agreement on Trade in Services, WTO Agreement, Annex 1B, The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts 325 (GATT Secretariat 1994), 33 I.L.M. 1167 (1994) at note 13, art. II.

nondiscriminatory terms and conditions. Under Paragraph 2.2 of the Reference Paper, further clarification and commitments are made, building upon the GATS Telecom Annex. In particular, paragraph 2.2 establishes the standard that WTO Members must ensure major suppliers provide interconnection at any technically feasible point in the network and the interconnection be: (a) non-discriminatory in its terms, conditions, rates and quality; and (b) offered on a timely basis. The interconnection obligations are very broad in order to cover all types of services, including basic interconnection from a foreign supplier into the Member Country's network.

The following WTO Member countries have made the above interconnection commitments:

- **Bangladesh** – Bangladesh became a member of the WTO in 1995, and was an original signatory to the GATS Telecom Annex. It did not, however, make commitments to adhere to the Reference Paper. Although it has taken an Article II MFN exemption to offering uniform accounting rates, it did not take an exemption to the larger obligation to ensure its major supplier offers services to all Member Country suppliers on a reasonable and non-discriminatory basis.
- **Cambodia** – Cambodia became a member of the WTO in 2004, and has agreed to a schedule of commitments for basic telecommunications, including commitments to adhere to the Reference Paper.
- **Egypt** - Egypt became a member of the WTO in 1995, though it did not originally agree to be a signatory to the GATS Telecom Annex. However, Egypt has since agreed to make specific telecommunications market opening commitments, and in June 2002, Egypt's schedule of commitments for basic telecommunications was certified in the WTO, including commitments to adhere to the Reference Paper.
- **Gambia** – The Gambia became a member of the WTO in 1996, and is a signatory to the GATS, but is not a signatory to the GATS Telecom Annex. It still is bound by obligations to provide MFN to all Member Country service suppliers such as IDT.
- **Gabon** - Gabon became a member of the WTO in 1995, and is a signatory to the GATS, but is not a signatory to the GATS Telecom Annex. It still is bound by obligations to provide MFN to all Member Country service suppliers such as IDT.
- **Jordan** – Jordan became a member of the WTO in 2000, and has agreed to a schedule of commitments for basic telecommunications, including commitments to adhere to the Reference Paper. Jordan also has made similar commitments in the context of Art. 3(c) of the Bilateral Trade Agreement with the United States entered into October 24, 2000, wherein Jordan commits to prohibit discriminatory treatment of U.S. telecommunications providers.
- **Kenya** – Kenya became a member of the WTO in 1995, and is a signatory to the GATS, but is not a signatory to the GATS Telecom Annex. It still is bound by obligations to provide MFN to all Member Country service suppliers such as IDT.

- **Mauritania** - Mauritania became a member of the WTO in 1995, and is a signatory to the GATS, but is not a signatory to the GATS Telecom Annex. It still is bound by obligations to provide MFN to all Member Country service suppliers such as IDT.
- **Morocco** – Morocco became a member of the WTO in 1995, and was an original signatory to the GATS Telecom Annex and the basic telecommunications Reference Paper. Morocco and the United States also entered into a Free Trade Agreement in June 2004. Pursuant to its Art. 13.3 and Art. 13.4, Morocco must ensure unrestricted interconnection, directory and indirectly, with all suppliers of public telecommunications services suppliers in its territory.
- **Tanzania** - Tanzania became a member of the WTO in 1995, and is a signatory to the GATS, but is not a signatory to the GATS Telecom Annex. It still is bound by obligations to provide MFN to all Member Country service suppliers such as IDT.

Other Trade Commitment Concerns

The following countries, while not members of the WTO, have Observer status before the WTO and are actively seeking accession to the WTO. At least one, Vietnam, has entered into a separate bilateral agreement with the United States that ensures telecommunications interconnection rights with its major supplier. Therefore, the USTR should encourage these countries as part of the accession process to make binding commitments in the basic telecommunications services area, including adoption of the Reference Paper. And, to the extent these countries have entered into separate bilateral trade agreements covering telecommunications services, enforce the commitments made.

- **Ethiopia** – Ethiopia applied for accession to the WTO in January 2003.
- **Laos** – Laos applied for accession to the WTO in July 1997, and began meetings with the WTO Working Party in October 2004.
- **Vietnam** – Vietnam applied for accession to the WTO in January 1995, and has been in active negotiations since then as to what commitments it is willing to make. In addition, on December 10, 2001, the U.S.-Vietnam Bilateral Trade Agreement was reached. Annex F of this trade agreement incorporates the GATS, the GATS Annex on Telecommunications and the basic telecommunications Reference Paper. Therefore, Vietnam should be held to the same standards as the other countries that are Members of the WTO as noted above. The USTR should take action to ensure that Vietnam is living up to its commitments to provide for non-discriminatory and reasonable interconnection to all U.S. carriers.

For the reasons described above, IDT urges the U.S. Government to work with the governments of Bangladesh, Cambodia, Egypt, Ethiopia, Gabon, Gambia, Kenya, Laos, Jordan, Mauritania, Morocco, Tanzania, and Vietnam to open their markets further to competition in accordance with their international trade commitments. Should you have any questions concerning these comments, please do not hesitate to contact me in that regard.

Respectfully submitted,

Joseph Sandri
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IDT Corporation