# Results of the 2007 Section 1377 Review of Telecommunications Trade Agreements

USTR annually reviews the operation and effectiveness of U.S. telecommunications trade agreements, pursuant to Section 1377 of the Omnibus Trade and Competitiveness Act of 1988. The Section 1377 Review is based on public comments filed by interested parties and information developed in ongoing contacts with industry, private sector and foreign government representatives in various countries. This year USTR received comments from eight companies and trade associations and reply comments from thirteen companies, trade associations and foreign governments. All comments are posted on the USTR website at http://www.ustr.gov/Trade_Sectors/Telecom-E-commerce/Section_1377/Section_Index.html

## Summary of Findings

The 2007 Section 1377 Review focuses on ***specific issues*** in Egypt, Jamaica, Mexico, Thailand and Guatemala, and on ***general issues*** of concern with respect to several countries, such as burdensome interconnection requirements, high mobile termination rates, problems with access to leased lines, and barriers to the provision of satellite capacity and Voice over Internet Protocol (VoIP) services. The Review also highlights areas of ***progress*** on specific issues, some of which were cited in last year's Review.

While many of these issues have been discussed in past reviews, for each issue addressed in this year's Review, we found sufficient evidence to warrant highlighting it again. These issues continue to raise questions regarding trading partners' compliance with their trade obligations. Therefore, as in past years, the 2007 Review establishes a list of countries and issues that USTR will actively monitor and indicates where USTR may take further action. Where trading partners are considering or planning regulatory decisions, USTR will also review developments and take additional action, if necessary, in ongoing efforts throughout the year.

**Discussion of Key Issues**

**1. Specific Issues**

***Egypt - Licensing and Interconnection Agreements***

Telecom Egypt's monopoly ended on December 31, 2005, but the Egyptian government has neither established clear rules regarding the granting of additional licenses nor issued any new licenses. One commenter has had an application pending since August 2006, with no apparent clarity on whether or when the application will be processed. In response to USTR inquiries, Egyptian officials have indicated that they are working on establishing licensing criteria for additional licenses. First, USTR is concerned that Egypt has not already established the criteria. Under the World Trade Organization (WTO) Reference Paper, Egypt is obligated to make publicly available "all licensing criteria and the period of time normally required to reach a decision concerning an application for a license." Second, explicit limits on the number of licenses, or unreasonable application of the licensing criteria, could run afoul of Egypt's commitments under Article VI or XVI of the General Agreement on Trade in Services (GATS).

In addition to the issue above, Telecom Egypt has not yet published a Reference Interconnection Offer (RIO), an issue also cited in last year's review. Under its Reference Paper commitments, Egypt committed to ensure that a major supplier in Egypt makes publicly available either its interconnection agreements or a RIO. According to Egyptian authorities, a RIO is available through the Egyptian regulatory authorities.

USTR is seriously concerned about whether Egypt is complying with its existing WTO commitments given what appears to be its failure to license new operators or make its licensing criteria publicly available, as well as the fact that Telecom Egypt has not made publicly available a RIO or its existing interconnection agreements. In light of these concerns, USTR will consider what further action may be appropriate, particularly should Egypt not undertake prompt efforts to resolve them.

***Jamaica - Universal Service Fee***

In last year's report, USTR expressed concern that a surcharge levied beginning in May 2005 on incoming international calls to fund Jamaica's universal service fund was particularly burdensome for U.S. carriers, given that most of Jamaica's incoming

international traffic originates in the United States. USTR further noted concern about whether the objectives of the universal service fund and the disbursement of funds for the projects were sufficiently transparent. Jamaica claims the purpose of this surcharge is to fund its e-Learning Project – a universal service program for building broadband access for schools and libraries in Jamaica. Under its WTO Reference Paper commitments, Jamaica agreed that any universal service program it implemented would be administered in a transparent, non-discriminatory and competitively neutral manner and not be more burdensome than necessary.

Many questions about this fund remain unanswered, including: when is the program expected to be fully funded?; why can't the funding burden be more equitably shared among all operator, domestic and foreign (particularly domestic mobile operators, whose termination rates raise questions as to whether they relate to cost)?; and when will the per-minute surcharge be discontinued?

In response to U.S. industry comments regarding the surcharge, the Jamaican Ministry of Industry, Technology, Energy and Commerce (the "Ministry") indicated that the surcharges collected between May 2005 and December 31, 2006 amounted to US$29.5 million, but were still insufficient to fully fund the country's universal service projects. While some estimates of the cost of the program were outlined by the Ministry[1], it signaled that an "even greater" – yet undefined – amount will be necessary to provide the requisite infrastructure for primary and early childhood institutions.

Given that these funds originate largely from U.S. sources (since up to 80 percent of incoming calls on which the surcharge is levied originate in the U.S., according to Jamaican authorities), USTR has a particular interest in seeing an accounting of the funds that have been collected, whether they are appropriate to the needs identified, and how they have been used. USTR will continue to monitor this program and urge Jamaica to operate the program in a transparent manner and to collect such funds from a broader base of users (i.e., not exclusively foreign operators) to ensure that the program does not adversely affect access to the Jamaican market nor constitute a program that is more burdensome than necessary to achieve Jamaica's program goals. As an interim measure, USTR recommends that the surcharge collection be suspended until Jamaica is able to provide answers to the questions raised in this Review.

[1] For example, US$2 million in capital costs for the "broadband network project" and recurring monthly costs of US$30,000; US$50 million in initial capital costs for telecommunications infrastructure to High/Secondary schools.

***Mexico - Mobile Termination Rates***

Last year, USTR expressed concern about Mexico's failure to resolve a dispute involving mobile termination rates charged by its incumbent carrier, Telcel, which could seriously affect U.S. suppliers and their Mexican affiliates operating in both local and long-distance markets in Mexico.

Central to this concern was the fact that Mexico was preparing to implement a system for terminating international long distance calls that had the potential to shift the entire burden for the phone call to U.S. consumers placing calls. Mexico's regulatory authority – Comisión Federal de Telecomunicaciones (COFETEL) – conducted an arbitration proceeding and recommended mobile termination rates which were to be in force until 2010, the year in which COFETEL stated that it would ensure that the rates would be cost-based[2]. USTR was disappointed that the rates COFETEL recommended were not based on any publicly verifiable data and that COFETEL chose not to implement a quicker glide path towards its target rate.

In any event, the COFETEL-recommended interconnection rates were never implemented. To avoid pending litigation over the rates COFETEL recommended, the fixed and mobile carriers in Mexico commercially negotiated alternative rates, set approximately one cent higher than those recommended by COFETEL. Based on the sharp increase in incoming calls from the United States in the year 2005, USTR estimates that U.S. carriers between 2007 and 2010 will end up paying a total of US$ 124 million dollars over what the carriers would have paid had COFETEL's recommended rates been implemented.

Implementation of the industry-negotiated interconnection rates raises questions about whether Mexico has succeeded in meeting its NAFTA commitment to ensure that the pricing of telecommunications transport services reflects the economic costs directly related to providing the services, and its WTO commitment to ensure that interconnection rates offered by major suppliers are cost-based.

Although COFETEL defends both its recommend rates and the industry negotiated rates as a means to fund network expansion (what appears to be a universal service goal), this argument is not compelling: Mexico's mobile market has been expanding rapidly to date without such high rates, and if the regulator is seeking to achieve universal service goals, it should do so through an explicit program implemented in a

[2] See COFETEL's Press Release No. 9/2006 (Comunicado de Prensa No. 9/2006).

competitively neutral manner, and not structured to subsidize a specific group of companies.

Rather than completely accepting the industry-negotiated rates, USTR urges COFETEL to ensure that – at a minimum – Telcel, with more than 70 percent of the Mexican mobile market, immediately offers a wholesale rate for terminating calls on its network that is no higher than the rate it charges its own retail customers to terminate within the Telcel network (e.g. which, for some calling plans, is as low as 7 cents per minute, compared with the 12 cents it currently charges other networks for the same function.[3]). USTR will closely monitor this issue, and engage in further consultations with Mexico if necessary.

## ***Mexico - Telecom Equipment Testing Requirement***

In 2005, Mexico began requiring testing of all telecommunications equipment which connects to a public telecommunications network, but has not yet put in place rules that permit such testing to be performed in the United States – e.g., through a mutual recognition agreement for conformity assessment. Despite a promise to implement the CITEL (Inter-American Telecommunications Commission) Mutual Recognition Agreement (MRA) vis-à-vis the United States by June 2006, Mexico has been very slow in making progress, even following a steady push from both the United States and Canada in the NAFTA Telecom Standards Sub-committee (TSSC).

U.S. telecom equipment manufacturing industry is shouldering unnecessary costs by having to send equipment to Mexico for testing prior to export. Implementing an MRA that would avoid such burdens was contemplated in the NAFTA. Now that such testing is mandatory, Mexico should take the necessary steps to implement an MRA as soon as possible. USTR will monitor progress on this issue closely over the next three months, and, depending on Mexico's progress in resolving this issue, may consider further action.

[3] Telcel's "Plan Intenso 3" offers 1300 minutes for a monthly rate of 1148.85 pesos – including 15% VAT tax – which equates to a per minute charge of .75 pesos per minute (88 pesos per minute minus 15% VAT tax) or $.07 cents (exchange rate 11.18). For "Plan Intenso 3" details, see Telcel website: http://www.telcel.com/portal/telcel.portal?_nfpb=true&planesTarifariosPortlet_1_actionOverride=%2Fportlets%2FplanesTarifarios%2Fshow_renta_mensual_detalle&_windowLabel=planesTarifariosPortlet_1&planesTarifariosPortlet_1idPlan=16&planesTarifariosPortlet_1idEstado=9&_pageLabel=PRM_PlanesRentaPage

***Thailand - GATS Schedule***

In its 1997 GATS schedule, Thailand committed to revise its schedule of commitments for basic telecommunications in 2006. The revisions were to reflect planned changes to its domestic telecommunications regulatory regime. Such changes, which were subsequently adopted, included increasing permissible foreign equity in a Thai telecommunications company from 20 percent to 49 percent, and the introduction of interconnection obligations similar to those found in the WTO Reference Paper. USTR is seriously concerned that Thailand, contrary to its 1997 GATS schedule, has not yet bound through WTO commitments the improvements made to its domestic regime between 1997 and 2006.

USTR urges Thailand to expeditiously follow through on its 1997 commitments, now overdue, in order to strengthen regulatory certainty in the Thai telecommunications market. USTR will closely monitor this issue, and consider additional action if Thailand fails to submit updated commitments by July of this year.

***Guatemala - Interconnection***

A U.S. company with an equity interest in a Guatemalan telecommunications operator has alerted USTR that Telecomunicaciones de Guatemala S.A. ("Telgua"), the incumbent operator in Guatemala (owned by Telmex of Mexico), cut off 20 percent of the Guatemalan telecommunications operator's interconnection capacity (E-1) circuits on October 7, 2006 due to a dispute between that company and Telgua. The dispute is currently in arbitration proceedings.

Although Guatemala has said that its regulator – the Superintendencia de Telecomunicaciones (SIT) – cannot intervene in a dispute that is subject to arbitration, it appears that Telgua's decision to cut off circuits was a unilateral action, not based on the outcome of this arbitration.

Attempts by the company to cause the SIT to act have led to a separate legal proceeding within the Ministry of Communications to determine whether or not the SIT should have ordered Telgua to reconnect the four E-1 ports. As this proceeding is still unresolved, the company has been forced to obtain a court order instructing Telgua to reconnect the circuits, which Telgua has ignored, despite two notifications from the SIT. The lack of resolution on this issue raises serious concerns about Guatemala's commitment to ensure interconnection pursuant to Articles 13.3 and 13.4 of the Dominican Republic – Central America Free Trade Agreement (CAFTA-DR), paragraph

5 of the GATS Annex on Telecommunications, and the WTO Reference Paper. USTR will encourage the Guatemalan authorities to address the issue of the circuit suspensions in a manner consistent with Guatemala's obligations under the CAFTA-DR and WTO Agreement.

Going forward, USTR urges Guatemala to introduce measures to prevent the recurrence of such disputes, the most important of which is ensuring that Telgua makes publicly available a RIO or existing interconnection agreement incorporating cost-based rates. Telgua has submitted an existing interconnection agreement to the SIT which Telgua purports incorporates cost-based rates. USTR is in the process of evaluating a copy of the agreement (obtained through the SIT) and urges SIT also to carefully evaluate this agreement in light of Guatemala's CAFTA-DR and WTO commitments.

## 2. General Issues

### ***Barriers to the Provision of Satellite Capacity***

The restrictions some countries place on access to foreign satellites serve as a barrier to full market entry by U.S. satellite operators in many countries. Market access can be further hampered by policies that appear to favor the use of domestic satellite operators or that require that all satellite capacity be sold through a monopoly telecommunications operator. Given the regional and global reach of satellite networks operated by U.S. operators, these policies significantly constrain commercial opportunities, particularly in growing markets, such as China and India.

#### *China*

In China, foreign satellite operators are required to obtain specific government approval or enter into a contract with a "qualified domestic entity" in order to sell satellite capacity to Chinese telecommunications companies. In general, foreign satellite operators are prohibited from signing contracts directly with Chinese telecommunications companies. The satellite capacity must first be sold to one of the two domestic satellite operators (China Satcom or Sinosat) who then resell it to telecommunications or broadcast companies. However, commenters in this year's Review have clarified that China does allow two foreign satellite operators (APT and Asiasat) to sell satellite capacity directly to telecommunications and broadcast companies in China. Similar treatment does not appear to have been accorded to other foreign satellite operators whose capacity coverage can include China, raising questions as to whether China is meeting its most-favored nation obligation under the GATS.

*India*

Likewise, access to foreign satellites by Indian telecommunications and broadcast operators is currently restricted. India's 1999 Telecom Policy allows for the use of satellite capacity from either domestic or foreign satellites, "in consultation with the Department of Space" (DOS). However, in practice, the "consultation" to be carried out by the DOS results in the requirement that foreign satellite operators sell their satellite capacity to the India Space Research Organization (ISRO), for resale to the target customer in India. ISRO, which forms part of the DOS, operates the domestic Indian satellite system INSAT and, thus, is a direct competitor to foreign satellite operators.

Commenters assert that access to the potential VSAT[4], video distribution and Direct-to-Home markets in India has been hampered by these policies. First, selling through ISRO decreases efficiencies of being able to deal directly with a customer who uses satellite capacity. Second, ISRO gains valuable customer information by serving as the "middleman" to the transaction. Finally, approval of the contracts often appears to be conditioned on the inclusion of contractual terms which allow for renegotiation if enough satellite capacity becomes available on an INSAT satellite.

These regulatory practices of China and India relating to access to foreign satellites are out of step with policies of most countries in the world, even those which have domestic satellite operators (such as Argentina, Brazil, Canada, Mexico, and the United States, to name a few). Most countries with domestic operators have developed a regulatory framework that allows foreign operators to offer satellite capacity in direct competition with the domestic operators, after complying with certain regulatory requirements. Indeed, many other countries place no requirements on the satellite operators, beyond the requirement to restrict sales to licensed service providers or other entities.

Greater access to satellite capacity from foreign satellites would be beneficial to the growth of both the Chinese and the Indian satellite services markets. USTR will continue to address these issues with both countries.

***Provision of Voice over Internet Protocol (VoIP) Services***

USTR is concerned about policies among trading partners stifling technologies that help promote innovative services, such as voice services provided through Voice over Internet Protocol (VoIP). A trade association representing leading VoIP providers has

[4] Very Small Aperture Terminal (VSAT) services use earth stations to establish data and voice communications via satellite, typically for corporate data networks.

submitted comments highlighting difficulties its members face in the provision of VoIP services abroad. Though VoIP services ride on a broadband infrastructure and are similar to other applications like e-mail, streaming audio and web browsing, VoIP service providers allege that they encounter market barriers that have the potential to stifle full utilization of the broadband infrastructure being deployed around the world.

In particular, these commenters point to market entry barriers such as voice services licenses which specifically restrict the provision of VoIP services. These restrictions are acute in countries that have foreign investment limits on basic telecommunications licensees. There have also been cases in countries, such as Chile[5], Belize[6], Panama[7], Mexico and the United Arab Emirates, for example, where incumbent telecommunications service providers appear to have blocked access to the websites which enable VoIP services. The ability to provide VoIP services in such countries often depends on the willingness of the regulator to address particular practices of their incumbent operators and prohibit such blocking, which is an uncertain prospect in many counties.

USTR is aware of the public policy implications that technologies such as VoIP may raise. It will monitor these debates with a view to ensure that trade commitments are not undermined by government measures that are simply designed to act as a barrier to these innovative means of providing a service, or which only serve to protect an incumbent operator's desire to block innovation and competition.

***Access to and Use of Public Telecommunications Services, Including Leased Lines***

Past reviews have typically addressed issues related to the access to and use of public telecommunications services. In particular, commenters have often cited problems related to reasonable and non-discriminatory access to and use of the public telecommunications network, including leased lines. Such access is important for the development of a competitive telecommunications market. In the past, we noted progress in solving problems related to provisioning times for leased lines. Still remaining, however, are issues associated with reasonable network access, which continue to require monitoring.

***Germany***

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[5] In November 2006, Chile's Free Competition Defense Court (TDLC) fined an incumbent operator for blocking VoIP providers.

[6] In 2006, Belize Telecom Ltd. asked the Public Utilities Commission (PUC) of Belize to allow it to block VoIP technologies. The PUC subsequently issued VoIP guidelines, allowing Internet Service Providers to offer VoIP services.

[7] The temporary blocking of VoIP services by C&W Panama was quickly remedied by Panama's regulatory agency.

As in previous years, commenters complain that delays in obtaining acceptable terms and conditions for access to both the wholesale broadband and local leased line markets in Germany have negatively affected their business opportunities in the country.

With respect to the wholesale broadband market, the German regulator, BNetzA, concluded in late 2005 that Deutsche Telecom AG (DTAG) had significant market power at both the Internet Protocol (IP) and the Asynchronous Transfer Mode (ATM) interconnection levels (referred to, respectively, as IP Bitstream and ATM Bitstream access). However, BNetzA did not issue its remedy decision with respect to IP Bitstream access until September 2006 and to date, access is still not available. BNetzA only recently issued an order for ATM Bitstream access and has yet to review and approve the access offer by DTAG. USTR will follow this proceeding closely over the next six months and will further engage the German government if there are unanticipated delays.

Commenters also again expressed disappointment at the long delay in issuing rules regarding access to local leased lines. Following extensive criticism by the European Commission and competitive carriers, BNetzA recently withdrew a 2006 decision in which it had determined that DTAG did not have significant market power in either trunk lines or access lines, citing difficulty in conducting the market analysis because of divergent data received from carriers. The German government announced in early March 2007 that it intends to conduct a new market analysis. Given the importance of local leased lines to the development of a competitive market, USTR will continue to monitor Germany's progress in resolving the matter.

Finally, amendments to the German Telecommunications Law (the "Law") that allow for the possibility of a "regulatory holiday" for DTAG's new optical fiber network (VDSL) have again been the subject of comments in this Review and are currently the subject of litigation before the European Commission. Commenters suggest that the regulatory holiday would exempt DTAG from ex-ante regulation of DTAG's VDSL network, essentially relieving DTAG of the requirement to offer the use of its network to competing carriers. Although the amendments to the Law do not appear to preclude regulation, the regulator ought to conduct a detailed and objective market analysis to identify where there is significant risk of abuse of market power, and take appropriate action to prevent such abuse. USTR will monitor the developments in this area, and will also monitor the way in which BNetzA examines the scope of competitive access in Germany as DTAG rolls out its fiber network.

***Singapore***

Lack of reasonable access to leased lines continues to plague competitive carriers in the Singapore market. Last year Singapore reaffirmed its decision to permit SingTel to deny competitors access to leased lines at economically efficient points of aggregation (tandem access), on the theory that this would create stronger incentives for competitors to invest in competing facilities, and that competitors would maximize their build-out to SingTel's multiple local exchanges. However, now that SingTel has announced plans to close a significant number of such exchanges, competitors are in the position of being forced to invest in facilities that may soon be rendered unusable. In a public consultation document issued in late January 2007,[8] Singapore's regulator – the Infocomm Development Authority of Singapore (iDA Singapore) – proposed that SingTel give competitors up to 18 months notice regarding any particular exchange it plans to close. This is a welcome proposal because it would extend the current requirement, which is six months, according to the iDA's reply comments. However, since the targeted exchanges have not yet been identified, and 18 months is hardly sufficient time to recover the costs of build-out to any particular exchange, competitors face a significant risk regarding any network expansion. This underscores the importance of giving competitors the option of interconnecting with leased capacity at tandem exchanges, at least until SingTel completes its network reconfiguration. In light of these new circumstances, USTR strongly urges Singapore to reconsider its decision to permit SingTel to deny competitors reasonable access to leased capacity at tandem exchanges.

***China***

Pricing of leased lines in China appears to be excessive relative to other countries in the region. Industry commenters indicate that the price for a common transmission unit, an "E-1" circuit (i.e. a 2 megabit/second service), from China to the United States is four times greater than that which is charged for an E-1 circuit from Taiwan, Japan or Korea to the United States. Such disparities suggest that prices in China for leased lines are excessive, and demonstrate the benefits that could accrue to users of leased lines if foreign firms could land additional capacity in China (which is currently prohibited). USTR will continue to monitor developments in this area.

[8] iDA Singapore Public Consultation Paper "Decommissioning of Co-location Sites Offered Under Singapore Telecommunications Limited's Reference Interconnection Offer, January 25, 2007.

***Regulatory Independence and Transparency***

This year commenters have highlighted problems resulting from what they deem to be a lack of strength of regulatory agencies vis-à-vis other government entities, as well as a lack of transparent rule-making process and the regulator's preference for telecommunications companies in which the government maintains a financial interest.

Companies continue to complain that China has not complied with its WTO commitments relating to regulatory independence. The Chinese government still owns and controls all major operators in the telecommunications industry and the Ministry of Information Industry (MII) still regulates the sector. Without a more independent regulator, it will be difficult to address broad concerns such as ensuring fair and equal treatment of foreign-based telecommunications operators, and transparent policy-making, licensing, and terms of operation.

As with China, complaints about independence of the regulatory body are particularly acute in countries where the government maintains a financial interest in telecommunications operators. Maintaining such a financial interest raises concerns that certain regulatory decisions, or delays in resolving matters, are based not on independent or impartial judgment, but rather are influenced by extraneous factors related to the government's financial interest in the operator. Yet, examples persist where such independence is questionable. For example, in Egypt, Ministry of Communications officials are also on the Board of Directors of the incumbent operator, Telecom Egypt, thereby creating a potential conflict of interest (*e.g.*, in instances where the regulatory body fails to license new technologies that Telecom Egypt may see as disruptive to its significant market share in Egypt).

India's independent telecommunications regulator (TRAI) often develops recommendations that would promote a more competitive market, but the recommendations are sometimes not endorsed or quickly adopted by the Department of Telecommunications, resulting in a delay of potential benefits to the market. TRAI's independence is also weakened by its lack of authority to issue telecommunications licenses.

USTR will continue to advocate for wider separation between the regulatory bodies and all market participants. An important way to establish this separation is to reduce and eliminate national government's financial interests in operators in the market.

***Excessive Market Entry Requirements***

China's high registered capital and joint venture requirements continue to pose significant barriers to market entry.

Although China pledged in April 2006 to address the problem of excessive capitalization, there have been no signs that it has taken or plans to take concrete steps to eliminate this burden. USTR urges China to expeditiously implement its pledge.

Another barrier to entry has been the unwritten policy that only existing telecommunications licensees in China are eligible to serve as joint venture partners for foreign companies. Given the *de facto* duopoly China currently maintains in every telecommunications sub-sector, this policy reduces joint venture partners to a commercially untenable number. USTR urges China to clarify that any generally qualified Chinese company is eligible to be a joint venture partner in the telecommunications sector. Recent reports in the official Chinese press documenting collusive agreements between the two largest wireline operators in China underscore the difficulty any new entrant will have in finding a competition-friendly joint-venture partner among incumbent operators.

Commenters have again complained about the $150 million dollar fee for a long distance telecommunications license in Colombia. During the course of the Colombia Trade Promotion Agreement negotiations, Colombia agreed to remove significant barriers to entry in telecommunications services, including a reduction of this high licensing fee. The Colombian Ministry of Communications has said that it is currently reviewing a study conducted regarding the new fee and expects to conclude its review in early summer, in order to license new operators beginning in August 2007. USTR will closely monitor Colombia's progress in this regard.

Commenters have noted that, despite lowering the license fees in India, the fee for International and Domestic Long Distance licenses remains unreasonably high, and could possibly discourage small companies from entering the market. USTR urges India to further reduce this licensing fee to more reasonable levels.

In Mexico, companies often encounter long delays in obtaining a license (called a "concession") to access satellite capacity on a foreign-registered satellite or to establish a public telecommunications networks which utilizes foreign satellites. Although Mexico's regulations call for granting a license within 120 days, companies routinely wait one to two years before obtaining their concessions. Though the concessions are granted by the Secretariat of Communications and Transportation (SCT), COFETEL also

plays a role in reviewing the information and has said that the delays often result from the presentation of incomplete information by the applicant. While this may be true, lack of transparent rules and excessive documentary requirements appear to be the real source of such delays.

### 3. Areas of Progress

***India - Guidelines Governing Domestic and International Long Distance Licensees***

As reported in last year's review, India took the important step of increasing the foreign direct investment (FDI) limit in the telecommunications sector from 49 percent to 74 percent. This action has the potential to promote investment and competition in the Indian telecommunications market. Based on this progress, we look to India to make a meaningful offer in the WTO services negotiations by offering to bind these improvements.

As a result of the increase in foreign investment levels, at least two U.S. telecommunications companies have received Domestic and/or International Long Distance (DLD/ILD) licenses in India, but have not commenced commercial operations. As reason for the delay, the companies cite issues related to the guidelines that would have governed the provision of the DLD and ILD services.

Industry expressed concerned that the guidelines would have inhibited their ability to do business, given restrictions on: (a) the remote management of telecommunications networks; (b) the routing of traffic; and (c) the transfer of accounting, user, and network infrastructure information outside of India. India believed these restrictions were necessary to address security concerns. The Government of India has recently modified these guidelines. USTR is still confirming reports that the recently issued guidelines were modified in a manner that mitigates industry's original concerns about their restrictive nature.

***India - Access to Leased Lines and to Submarine Cable Capacity***

U.S. operators have perennially identified access to submarine cable systems as a serious problem in the Indian market. In 2005, the Telecom Regulatory Authority of India (TRAI) took action to address this problem and recommended policies to overcome issues associated with access to and use of submarine cable systems in the Indian market. TRAI submitted a set of recommendations to the Indian Department of

Telecommunications (DoT) [9], which advised the DoT to take steps to facilitate competitive access to submarine cable systems. Specifically, TRAI recommended that DoT grant it authority to require operators owning cable landing stations to provide licensed operators equal access to bottleneck facilities on a non-discriminatory basis and to publish the terms and conditions for access to such stations. In addition, TRAI recommended that it have the ability to determine and specify cost-based access charges through regulation.

In December 2006, the DoT adopted the TRAI recommendations and further instructed it to conduct a public consultation proceeding aimed at implementing the recommendation on the Introduction of Resale in the International Private Leased Circuits (IPLC) Segment. This public consultation commenced in January of this year, and concluded in March 2007 with the publication by TRAI of its Recommendation on "Terms & Conditions for Resale in IPLC Segment". In addition, on the issue of accessing cable landing facilities, VSNL – the company which owns several cable landing stations in India and about whom carriers have complained in the past – took the positive step of publishing on its website standard terms and conditions which will govern access to the cable landing stations it owns. USTR plans to follow the progress of the implementation of the TRAI recommendations to ensure that they, and VSNL's published term and condition, have the intended effect of allowing equal access to the cable landing stations.

***India - Access Deficit Charge***

TRAI took the positive step last year[10] of reducing its access deficit charge (ADC), which cross-subsidizes local service with revenue generated by long distance calls, and made a further commitment to phase it out by 2008 and merge the program with a revenue-share-based ADC. Nonetheless, U.S. companies have again asked USTR to monitor the issue. The companies express concern that India continues to place an unreasonable and discriminatory ADC burden on foreign international service providers and their customers making calls to India, which the companies assert are inconsistent with India's WTO Reference Paper commitment to administer universal service obligations in a transparent and non-discriminatory manner.

USTR understands that TRAI is in the process of conducting its yearly consultation on this issue prior to issuing its order for 2007-2008. USTR will monitor the outcome to

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[9] "Measures to Promote Competition in International Private Leased Circuits (IPLC) in India" (*TRAI, December 16, 2005)*

[10] "TRAI Issues Amendment to Interconnect Usage Charges Regulation, 2006", *TRAI Press Release No. 16/2006 (February 23, 2006)*

verify that the ADC will be cut in proportion to a glide path that will allow for ADC to enter a sunset regime in 2008, as previously announced. Equally, it will examine whether ADC on international outgoing and incoming calls is charged in a non-discriminatory manner.

### *Australia – Privatization of Telstra*

Last year, Australia completed[11] the process of privatizing the dominant carrier Telstra, an accomplishment that USTR applauds.

This action was complicated, however, by Telstra's simultaneous push for broad deregulation of its services, which it linked to its future business prospects. One of the key issues was pricing of unbundled local loops, which has been the subject of a longstanding regulatory dispute. While the government ultimately addressed this issue in a pro-competitive manner, Telstra appealed this decision, and appears to have initiated a new effort to gain regulatory advantages. USTR will continue to monitor the outcome of this issue, given its relevance to U.S. commercial interests in Australia.

### *Mexico – Reform of Radio and Television Law*

Last year, Mexico amended its Radio and Television Law (the "Law") to include a procedure for granting new licenses for television and radio through a public bidding process. Previously, the granting of new spectrum for broadcast services required a presidential decree. USTR views the introduction of more competition into Mexico's broadcast market as positive and encouraging, given the other steps Mexico has recently taken to allow the convergence of its telecommunications and television markets.

Last year the Secretary of Communications and Transportation (SCT) published convergence regulations that allow telecommunications and cable operators to offer integrated packages of voice, video and data services. Televisa has introduced a triple play package (television, Internet access and pay TV). Televisa is one of the two major broadcast companies in Mexico and owns a cable company. Telmex, the dominant fixed line provider, has launched a platform that offers television via the Internet and plans to include pay TV in its range of services.

[11] According to a submission by Telstra, 17 percent of Telstra's shares will be held for at least two years in a Commonwealth investment fund – which is said to be separate legal entity from the Australian Government.

Access to additional programming content – generated through the establishment of additional broadcast networks in Mexico – will help foster growth in investments in converged platforms, thereby increasing the level of competition in the telecommunications and broadcast markets in Mexico. The ability of U.S. firms to participate in this market, (similar to Mexican participation in the U.S. market) should help strengthen competition in both the programming and transmission segments.