***MEXICO – MEASURES AFFECTING TELECOMMUNICATIONS SERVICES***

(WT/DS204)

ORAL STATEMENT OF THE UNITED STATES
AT THE FIRST MEETING OF THE PANEL

December 17, 2002

1. Thank you, Mr. Chairman and Members of the Panel. We are pleased to be here today to present the views of the United States.

2. This dispute concerns Mexico's failure to observe the requirements of the Reference Paper, a common set of regulatory principles developed during the Basic Telecommunications negotiations and attached by Mexico to its Schedule, and the obligations included in the GATS Annex on Telecommunications. While this is the first case involving trade in telecommunications services, the legal principles involved in the dispute are hardly novel. As addressed in the United States' First Written Submission and further discussed in my statement today, those issues can and should be resolved through straight-forward application of the rules of interpretation included in the *Vienna Convention on the Law of Treaties*.

3. The facts demonstrate a dramatic failure by Mexico to live up to its commitments. Although Mexico has permitted multiple Mexican carriers to provide international telecommunications services over their networks since 1997, it continues, through its International Long Distance ("ILD") Rules, to reserve for former monopoly supplier Telmex the exclusive right to establish all terms and conditions for the termination of international traffic. In this regard, Mexico is alone amongst WTO Members. It is the only WTO Member with a competitive market for the supply of international facilities-based services to prohibit market-based negotiations for the termination of international traffic. Under Mexican rules, Telmex alone negotiates interconnection rates, which must be applied by all of its competitors.

4. While Mexico has acknowledged to the OECD that the ILD Rules "might not be the optimum for competition,"[1] it has failed to take actions necessary to reform the rules or to require that Telmex charge lower international interconnection rates. In fact, Mexico has turned back all attempts by both Mexican and U.S. carriers to establish competitive, cost-based alternatives to Telmex's interconnection rates for cross-border suppliers.[2] Mexico has even failed to act on requests by Telmex to modify provisions of Mexican law "that prevent negotiation of competitive market-based international termination rates."[3]

5. The economic impact of Mexico's intransigence on U.S. carriers, and on U.S. and Mexican consumers, is enormous. U.S. carriers sent 5.5 billion minutes of outbound international telephone calls to Mexico in 2000 alone, leading to over $1 billion in termination charges. Because this route represents more than 80 percent of all Mexican international traffic,[4] the United States (as compared to other countries) is hit particularly hard by Mexico's conduct. The ILD Rules have ensured that Telmex's international termination rates are more than 75 percent higher than its prices to Mexican carriers for the same network components and functions. The failure to ensure reasonable, cost-based rates puts Mexico in violation of its Reference Paper obligations.

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[1] *See* source cited at U.S. First Written Submission, para. 15.
[2] *See* sources cited at U.S. First Written Submission, paras. 16-17.
[3] *See* source cited at U.S. First Written Submission, para. 18.
[4] U.S. First Written Submission, para. 94 (footnote 79).

6. This failure also leads to violation of the GATS Annex on Telecommunications. By requiring foreign suppliers to negotiate exclusively with Telmex and to pay unreasonable interconnection rates that are not cost-based, Mexico's ILD Rules prevent reasonable access to and use of public telecommunications networks and services in Mexico. Those same rules also prevent foreign suppliers from interconnecting private leased circuits with foreign public networks for the supply of international circuit switched telecommunications services. In fact, Mexico has even refused to make private leased circuits available to U.S. suppliers, failing altogether in its obligation under the Annex to grant access to and use of public telecommunications networks and services in Mexico.[5]

7. To remedy these violations, the United States raises three primary claims: 1) Mexico has failed to comply with Section 2 of the Reference Paper; 2) Mexico has failed to comply with Section 1 of the Reference Paper; and 3) Mexico has failed to comply with Sections 5(a) and (b) of the Annex on Telecommunications. My oral statement today will summarize the U.S. claims, and offer some preliminary replies to arguments raised by Mexico in its First Written Submission.

*Section 2 of the Reference Paper*

8. I will turn first to Sections 2.1 and 2.2 of the Reference Paper. Those provisions require Mexico to impose certain disciplines on Telmex – Mexico's major supplier of basic

[5] *See* sources cited at U.S. First Written Submission, para. 20.

telecommunication services – in its dealings with other suppliers seeking to interconnect with its network for the purpose of supplying services covered by Mexico's GATS Schedule.

9. In its First Written Submission, the United States set out the elements necessary to demonstrate that Mexico has failed to impose those disciplines. To summarize these arguments briefly, the United States demonstrated that Mexico undertook the interconnection obligations included the Reference Paper,[6] that Mexico committed to accord foreign suppliers market access for the cross-border supply of basic telecommunications services (as a facilities or a non-facilities based operator),[7] that U.S. suppliers "interconnect" with Telmex within the meaning of the Reference Paper,[8] that Telmex is a "major supplier,"[9] that Mexico fails to ensure that Telmex provide interconnection at rates that are "*basadas en costos*,"[10] and that Mexico fails to ensure that Telmex provides interconnection on terms and conditions that are "*razonables*."[11]

10. Mexico's principal response to the United States' claim that it has failed to honor its commitments under Section 2 of the Reference Paper is that it did not undertake a specific commitment in its Schedule to permit the cross-border supply of basic telecommunications services. In other words, Mexico claims that this commitment is effectively unbound. (Mexico

[6] U.S. First Written Submission, paras. 45-47.
[7] U.S. First Written Submission, paras. 48-58.
[8] U.S. First Written Submission, paras. 39-43, 59-67.
[9] U.S. First Written Submission, paras. 68-99.
[10] U.S. First Written Submission, paras. 106-156.
[11] U.S. First Written Submission, paras. 157-188.

makes this same argument to defend itself against certain of the United States' claims under the Annex on Telecommunications.)

11. However, that is not what Mexico's Schedule says. Mexico included the following limitation in the market access column of its Schedule with respect to mode 1 or cross-border supply of basic telecom services for facilities-based operators:

> (1) **None**, except the following:
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> International traffic must be routed through the facilities of an enterprise that has a concession granted by the Ministry of Communications and Transport (SCT).

12. Mexico tries to eliminate the effect of this concession by claiming that when it said "None," as in "no" limitations, except for the requirement to route international traffic through the facilities of a Mexican concessionaire, it really meant to say "unbound."

13. Mexico's argument is untenable. The requirement to route international traffic through the facilities of a Mexican concessionaire does not completely eviscerate Mexico's market access commitment for mode 1. First, even if this limitation had any effect, it would still be a limitation on a commitment that Mexico undertook. And Mexico's Reference Paper obligations are triggered whenever Mexico takes a commitment. Section 2.1 of the Reference Paper makes that clear. Indeed, Mexico's routing requirement is not a market access limitation at all. We note the EC's point that the limitation scheduled by Mexico is superfluous and without legal effect because a routing requirement is not one of the limitations listed in Article XVI:2 of GATS. A note by the Secretariat supports this argument, confirming that "a Member grants full market

access in a given sector and mode of supply when it does not maintain in that sector and mode any of the types of measures listed in Article XVI."[12] In the United States' view, Mexico did not need to schedule the requirement that cross-border suppliers route traffic through the facilities of a concessionaire to maintain that limitation for Article XVI purposes. In this sense, the limitation is superfluous and has no legal effect with respect to market access.

14. It is important to remember that the United States is not claiming in this dispute that Mexico has failed to honor its market access commitments under GATS Article XVI or that the United States should not have to comply with the routing requirement. The existence of Mexico's Scheduled commitments is relevant because both Mexico's Reference Paper obligations and our rights to access and use under the Annex are applicable wherever Mexico has undertaken specific commitments. The identification of the routing requirement in Mexico's Schedule does not alter this analysis: Mexico has a market access commitment for the mode 1 supply of basic telecommunications services by both facilities-based and non-facilities based (commercial agencies) operators.

15. Mexico also included a specific commitment in its Schedule to permit the supply of basic telecom services by commercial agencies (also known as resellers) through a commercial presence in Mexico. As with mode 1, in the market access column, Mexico indicates "**None**" for mode 3 limitations for commercial agencies, with the following notation: "[t]he establishment

[12] MTN.GNS/W/164/(3 September 1993), para. 4.

and operation of commercial agencies is invariably subject to the relevant regulations. The SCT will not issue permits for the establishment of a commercial agency until the corresponding regulations are issued."

16. This commitment is relevant to the United States' claims under the Annex on Telecommunications, which I will discuss shortly. The underlying point is the same, however. In its written submission, Mexico essentially contends that it did not undertake any meaningful market access commitments for the supply of basic telecommunications services in mode 3. Specifically, Mexico argues that "[t]he issuance of regulations is at the discretion of the Mexican authorities taking into account the transition occurring in the Mexican telecommunications market."

17. Again, Mexico's position is untenable. Interpreting Mexico's notation on mode 3 resale in this manner would completely undermine Mexico's market access commitment with respect to commercial agencies. The issuance of regulations is not a market access limitation listed in GATS Article XVI:2 and therefore cannot have the legal effect of essentially unbinding Mexico's market access commitment with regard to mode 3 commercial agencies. Even Telmex was of the understanding that Mexico was bound by its WTO commitments to "promptly" issue the relevant regulations. In December 1997, Telmex's U.S. subsidiary, Telmex/Sprint Communications, Inc. ("TSC"), informed the U.S. Federal Communications Commission ("FCC") that "[s]ince Mexico is bound by an international agreement to fulfil its commitments, there is no basis for assuming that Mexico does not intend to comply fully with its WTO

commitments and thus promptly adopt regulations allowing switched resale and grant permits to resellers."[13]

18. Over five years have passed and Mexico still has not adopted the relevant regulations. Again, to place this in the appropriate context, it is important to remember that the United States has not brought a claim against Mexico under GATS Article XVI for failure to issue the relevant regulations and permit resale as it committed. The point here is that Mexico's argument that it did not undertake a mode 3 commitment for commercial agencies is just as flawed as its argument regarding its mode 1 commitment.

19. Having undertaken specific commitments with regard to the cross-border supply of basic telecommunications services and having the adopted the Reference Paper as an additional commitment under GATS Article XVIII, Mexico committed to abide by the terms and conditions in Section 2 of the Reference Paper. In response to the United States' demonstration that Mexico has failed to ensure that its major supplier, Telmex, provides interconnection at rates that are based in cost and on terms and conditions that are reasonable, Mexico argues that the scope of the Reference Paper extends only to "*domestic* interconnection." According to Mexico, "international interconnection" or accounting rate regimes are not "interconnection" as that term is used in the Reference Paper.

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[13] Telmex/Sprint Communications, L.L.C., Consolidated Opposition of Telmex/Sprint Communications, L.L.C. to Applications for Review, filed Dec.30, 1997, pg. 7.

20. Mexico's argument is simply not supported by the plain language of the Reference Paper. The definition of "interconnection" in Section 2.1 is not limited to domestic interconnection, or in other words interconnection provided to commercially present suppliers. It is written broadly to include all means of "linking" for the purpose of enabling users to communicate – whether domestic (mode 3) or international (mode 1). Indeed, even Mexico, in almost all references in its internal laws and regulations, refers to the linking of foreign service suppliers to its international port operators as "interconnection." For example, Rule 2 of the ILD Rules provides that an international port "is a gateway *interconnected* with originating and destination international circuits." Likewise, Rule 3 states that "only international gateway operators shall be authorized to *interconnect* directly with the public telecommunications networks of the other countries' operators for the purposes of carrying international traffic." Finally, Article 47 of Mexico's Federal Telecommunications Law provides that *"interconnection* of public telecommunications networks with foreign networks shall be carried out through agreements entered into by the interested parties."

21. There can be no serious question that from a technical perspective, a U.S. and Mexican carrier "interconnect" with each other to exchange traffic across a border, by linking their networks to one another. Mexico appears to argue that, despite this fact and notwithstanding the unambiguous language in Section 2.1, mode 1 interconnection rates, or accounting rates (as they are sometimes called), were intended to be excluded from the obligations of the Reference Paper. Mexico relies on its own notions about the goals underlying the Reference Paper, the alleged

negotiating history of the Reference Paper, and an unsupported argument that the obligations in Section 2 have no meaning for mode 1 interconnection.

22. Mexico is wrong on all accounts. First, there is nothing in the Reference Paper to suggest that its *only* goal was to promote *domestic* competition. There is no textual basis for concluding that the Reference Paper is limited to one mode of service, *i.e.*, that which is solely within its territory.

23. Second, the Reference Paper does not support Mexico's argument that accounting rates (or international interconnection rates) were intended to be excluded from the definition of "interconnection." Mexico cites to a draft of the Reference Paper that included a definition of the term "accounting rate," and a provision regarding public access to accounting rates and explanations regarding those rates.[14] According to Mexico, the deletion of these provisions from the final text of the Reference Paper signals that "'accounting rates' were explicitly and deliberately excluded from the Reference Paper."[15] Mexico's argument ignores the rules of treaty interpretation included in the Vienna Convention. Whatever provisions were considered during the drafting process, the Panel is charged with interpreting the *final* version of the Reference Paper. That version includes, in Section 2.1, a definition of "interconnection" that broadly covers "linking . . . to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier." Section 2.2 then requires that

[14] Mexico First Written Submission, para. 168.
[15] Mexico First Written Submission, para. 169.

Members ensure interconnection, broadly defined, at "*tarifas*" that are "*basadas en costos*." The ordinary meaning of Section 2.2, in the context of the broad definition of "interconnection" included in Section 2.1, requires the application of the "*basadas en costos*" standard to any "*tarifas*" associated with "linking . . . to allow the users of one supplier to communicate with users of another supplier . . ."

24. Mexico also claims that since accounting rates continue to be the subject of study by the International Telecommunications Union ("ITU"), and since they are "on the table" in the current WTO services negotiations, they must have been excluded from the Reference Paper.[16] The fact that accounting rates are subject to discussions in the ITU has no relevance to whether they are covered by Mexico's WTO commitments, however; nor is it relevant that WTO Members are considering *further* commitments on accounting rates in the current services negotiations.

25. Mexico also claims that the "Chairman's Note" demonstrates that "WTO Members did not intend that accounting rates would be subject to the obligations of the GATS, including the Reference Paper.[17] This argument is unsound for at least two reasons.

26. First, the Chairman's Note is at best a non-binding statement that did not find its way into the GATS, the Reference Paper or Mexico's Schedule itself. A report by the Group on Basic Telecommunications clearly states that "[t]he Chairman stressed that this was merely an

[16] Mexico First Written Submission, paras. 170, 173.
[17] Mexico First Written Submission, para. 171.

understanding, which could not and was not intended to have binding legal force. It therefore did not take away from Members the rights they have under the Dispute Settlement Understanding . . ."[18]

27. Second, as the above-cited report by the Group on Basic Telecommunications states, the Chairman's Note "was merely intended to give members who had not taken MFN exemptions on accounting rates some degree of reassurance."[19] Even in that limited context, the Note has no application outside of GATS Article II - the MFN article. This is clear from the Note's text: the reference in the Chairman's Note to "such" accounting rates is a reference back to the introductory paragraph of the Note, which speaks to "differential" accounting rates and the MFN exemptions actually taken by the five countries mentioned in the Note. However, the United States has not brought a claim under Article II of the GATS and the Note is irrelevant to this dispute.

28. In these circumstances, it is not credible for Mexico to argue that it "consciously relied" on an understanding that, pursuant to the Chairman's Note, accounting rates were not subject to Reference Paper obligations.[20]

29. Finally, Mexico argues that because certain of the provisions in Section 2 have no meaning in the context of interconnection provided to cross-border suppliers, it does not apply to

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[18] S/GBT/M/9 (10 March 1997) (cited in Japan's third-party submission, para. 7).
[19] *Id*.
[20] Mexico First Written Submission, para. 175.

such interconnection.[21] This argument should be rejected for at least two reasons. First, the fact that some of the requirements of Section 2 may not apply to interconnection provided to cross-border suppliers does not mean that other requirements of Section 2 are equally inapplicable. Second, many of the requirements cited by Mexico do apply to the interconnection of cross-border traffic. For example, since U.S. carriers interconnect their networks with the network of Telmex at the border, the border is clearly a "technically feasible point" of interconnection under Section 2.2. That Mexico prohibits interconnection at other technically feasible points does not change the nature of the activity encompassed by interconnection. Also, requirements of non-discrimination and unbundling are equally relevant to the interconnection of international traffic as they are to the interconnection of domestic traffic.

30. Mexico also incorrectly claims that national carriers can have no incentive to provide low-quality service or to block access for international calls.[22] First, national carriers are direct competitors with cross-border suppliers that originate services in-country through home-country direct and similar call reversal services. Second, a national carrier has an incentive to impose a competitive disadvantage on a foreign cross-border supplier if an affiliate of the national carrier competes with the cross-border supplier – as many affiliates were expected to do following a successful outcome of the negotiations.

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[21] Mexico First Written Submission, paras. 155-163.
[22] Mexico First Written Submission, para. 157.

31. In sum, neither the ordinary meaning of the text of the Reference Paper nor its negotiating history support Mexico's argument that interconnection rates provided to cross-border suppliers, or accounting rates, are not within the scope of Section 2 of the Reference Paper. Having failed to establish that Section 2 of the Reference Paper does not apply, Mexico must refute the United States' affirmative showing that Mexico has failed to ensure that the rates charged by Telmex for interconnection provided to cross-border suppliers are not *basadas en costos.* The United States has documented several methodologies to show that the interconnection rates charged to cross-border suppliers are not *basadas en costos*. Significantly, Mexico does not argue that its interconnection rates <u>are</u> *basadas en costos*. It merely offers a conclusory rejection of all of the United States' proposed methodologies, collectively, without offering any alternative against which to judge Mexico's compliance.

32. In response to the United States' demonstration that the rates charged for mode 1 interconnection substantially exceed the price charged to domestic suppliers for the *exact* same network components and services, Mexico does not contest the factual evidence presented to the Panel. Mexico does not contest the identification by the United States of the network components used to provide such interconnection, or the prices charged by Telmex to commercially present suppliers for these identical network components. Instead Mexico argues that the United States "attempts to imply" that "the costs of providing national access through

accounting rate agreements must be determined in the same manner as the costs of domestic interconnection."[23]

33. This is not true. The United States is not arguing that the costs of mode 1 interconnection must be equal to the costs for domestic interconnection for commercially-present suppliers. The point of the estimated cost model set forth in paragraphs 121-140 of the United States' First Written Submission is to show that the rates currently charged by Telmex substantially exceed the prices charged for the same elements domestically. Since Mexican law requires that interconnection rates for commercially-present suppliers must recover at least the total cost of all network elements,[24] interconnection rates for cross-border suppliers that exceed rates for commercially-present suppliers are by definition not based in cost. In other words, the United States is asking that the Panel determine that the rates currently charged by Telmex for interconnection provided to cross-border suppliers are not based in cost. We are not asking that the Panel determine the correct rate. Mexico's international interconnection rates are not "basadas en costos," whatever definition of the term is used.

*Section 1 of the Reference Paper*

34. Let me turn now to Section 1 of the Reference Paper. The obligation in Section 1 is quite straightforward, and requires Mexico to maintain appropriate measures to prevent Telmex from engaging in or continuing anti-competitive practices. In its First Written Submission, the United

[23] Mexico First Written Submission, para. 186.
[24] U.S. First Written Submission, para. 124.

States set out the elements necessary to demonstrate that Mexico has failed to take appropriate measures to curb Telmex's anti-competitive practices. While the Reference Paper does not itself define the term, the United States demonstrated that "anti-competitive practices" must at least encompass what are generally agreed to be the most egregious examples of anti-competitive behavior, including horizontal "cartel" agreements to fix prices.[25] In its First Written Submission, the United States demonstrated that Mexico's ILD Rules not only fail to prevent this type of anti-competitive by Telmex, but actually *require* it.[26]

35. In response to the United States' argument that Mexico has failed to comply with its obligation to maintain appropriate measures to prevent anti-competitive practices, Mexico claims that the United States is asking for a guaranteed result, which is not required under Section 1, and that, in any event, the ILD Rules are not anti-competitive. According to Mexico, the ILD Rules are aimed at increasing competition in its domestic telecommunications market.[27]

36. Again, Mexico misconstrues the United States' argument. The United States is not arguing that Section 1 requires a guaranteed result. Indeed, the United States agrees that it is the maintenance of appropriate measures that is required.

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[25] U.S. First Written Submission, paras. 193-194.
[26] U.S. First Written Submission, paras. 196-206.
[27] Mexico First Written Submission, para. 206.

37. In this case, Mexico "gives with one hand but takes away with the other." As explained in our written submission, although Mexico maintains general competition measures, which are applicable to Telmex, it also maintains measures that actually require anti-competitive conduct on the part of Telmex. Mexico's ILD Rules require its telecommunications carriers to adhere to a Telmex-led horizontal price-fixing cartel. Mexico has also acknowledged to the OECD that these rules "might not be the optimum for competition."[28]

38. Incredibly, Mexico now contends that its ILD Rules – which contain an explicit restriction on price competition together with the division of supply among market participants, the classic features of a cartel – should be regarded instead as a measure to "promote competition." Exactly how the ILD Rules do this is never developed in Mexico's submission, nor could it be given the *per-se* anti-competitive nature of such arrangements. In fact, Mexico admits that the effect of the ILD Rules is to prevent smaller carriers from undercutting Telmex on price.[29] Preventing price competition by new entrants to protect a major supplier's higher prices cannot possibly be understood as "promoting competition."

39. Mexico also states that its rules were designed to "mirror the pre-existing rules of the United States," and were designed to prevent whipsaw of Mexican carriers by foreign carriers.[30] This is a disingenuous *post-hoc* attempt to justify its anti-competitive rules, however.

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[28] *See* source cited at U.S. First Written Submission, para. 15.
[29] Mexico First Written Submission, para. 79.
[30] Mexico First Written Submission, para. 210.

40. The U.S. international regulatory scheme upon which Mexico's ILD Rules were allegedly based is qualitatively different from Mexico's rules. The U.S. rules are designed to prevent monopolistic abuses where the potential for them still exists, not to authorize and mandate such abuses like Mexico's ILD Rules. The U.S. uniform or nondiscriminatory settlement rate and proportionate return requirements only apply to foreign carriers with market power, whereas Mexico's rules apply to all foreign carriers regardless of their market power. The U.S. rules encourage all U.S. carriers to negotiate cost-oriented rates. Mexico's rules prohibit all carriers, except Telmex, from negotiating rates and thus encourage artificially high rates – the exact opposite of cost-based.

41. In fact, the United States has not any time given one carrier the exclusive authority to negotiate international interconnection rates for itself and other competitive carriers. Contrary to Mexico's statement that WorldCom would not permit other U.S. carriers to participate in recent negotiations with Telmex,[31] WorldCom has no authority to prevent independent negotiations by other U.S. carriers, and Telmex has no obligation to comply with any such request by WorldCom.

42. In short, the ILD Rules are not, as Mexico claims, part of a domestic regulatory framework designed to increase domestic competition. Mexico's rules compel *per se* anti-competitive conduct (price fixing between competitors). The fact that anti-competitive conduct

[31] Mexico First Written Submission, para. 208 (footnote 123).

is compelled by the government does not change the underlying nature of the conduct as anti-competitive.

*Annex on Telecommunications*

43. Finally, I would like to address Mexico's response to our claims under Section 5 of the Annex on Telecommunications.

44. The United States' first claim under the Annex is that Mexico fails to ensure that U.S. service suppliers have access to or use of public telecommunications networks or services in Mexico on reasonable terms and conditions, within the meaning of Section 5(a) of the Annex.[32] The United States' second claim under Section 5 of the Annex focuses on Section 5(b). Section 5(b) requires Mexico to ensure that U.S. facilities-based operators and commercial agencies can access and use private leased circuits that are offered within and across Mexico's border, as well as interconnect those circuits with public networks and services.[33]

45. Mexico begins its rebuttal to the U.S. claims by arguing that the Annex does not require Mexico to ensure access and use to suppliers of public telecommunications services.[34] This argument is simply not credible. In outlining the objectives for the Annex, Section 1 states that telecommunications has a "*dual role* as a distinct sector of economic activity and as the underlying transport means for other economic activities . . ." (emphasis added). The Annex

[32] U.S. First Written Submission, paras. 207-246.
[33] U.S. First Written Submission, paras. 252-296.
[34] Mexico First Written Submission, paras. 214-217, 221-228.

does not speak, therefore, solely to the role of telecommunications with respect to "other economic activities." Furthermore, Section 2(a) states that the Annex applies to "*all* measures" affecting access to and use of public telecommunications transport networks and services, without exception.

46. Furthermore, Section 5(a) imposes certain obligations "for the supply of a service included in [a Member's] Schedule." As I explained earlier and in our first written submission, in fact, Mexico undertook specific commitments in its Schedule concerning the supply of basic telecommunications services, and Section 5(a) applies to that extent. For this reason, Mexico is incorrect to argue that to accept the United States' claims, the Panel would have to find that the Annex "overrides" Mexico's Schedule. Rather, Section 5(a) of the Annex is triggered *because of* the commitments made in Mexico's Schedule.

47. Mexico also argues that it has no obligations under the Annex because it did not undertake a specific commitment to permit either facilities-based operators or commercial agencies to "use" its public telecommunications transport network or services within Mexico or across its border.[35] According to Mexico, this is reflected in the notation inscribed in its Schedule requiring that international traffic route through the facilities of a Mexican concessionaire.

[35] Mexico First Written Submission, para. 237.

48. As I explained earlier, however, Mexico's argument is contrary to the ordinary meaning of its Schedule. Mexico's Schedule includes a routing restriction that is inscribed in Mexican law and that is not challenged by the United States. This does not mean that Mexico left cross-border market access for the provision of basic telecommunications unbound; it simply means that market access is subject to a routing restriction. Similarly, cross-border suppliers may "access and use" public telecommunications transport networks and services in Mexico consistent with the requirement to route international traffic through the facilities of a Mexican concessionaire.

49. Finally, Mexico argues that the U.S. claims under the Annex should be rejected because the United States has not demonstrated that Mexico has failed to comply with Sections 5(e) and (f) of the Annex.[36] The United States does not consider Sections 5(e) and (f) necessary to establish a claim under Sections 5(a) and (b) of the Annex. Notwithstanding this position, the United States intends to respond to Mexico's arguments regarding compliance with Sections 5(e) and (f) on the merits and will demonstrate in our rebuttal submission that Mexico's conditions on access and use are not justified by Sections 5(e) and (f). As one example, although Mexico argues that its restrictions on resale are consistent with Section 5(e), as necessary to enforce the limitations on market access inscribed in its Schedule,[37] this is quite evidently not true. Mexico's Schedule authorizes cross-border suppliers to provide basic telecommunications services, subject only to the limitation that they route traffic through the facilities of a concessionaire.

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[36] Mexico First Written Submission, paras. 253-257.
[37] Mexico First Written Submission, para. 264.

50. Mr. Chairman, and Members of the Panel, today I have addressed only the primary arguments raised by Mexico in its First Written Submission. The United States does intend to address all of Mexico's arguments in our rebuttal submission. In the meantime, we are pleased to answer any questions the Panel may have. This concludes my oral statement. Thank you for your attention.