Mexico – Measures Affecting Telecommunications Services

(WT/DS204)

Comments of the United States on Mexico's Answers to the Panel's Questions at the Second Meeting

April 30, 2003

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Question 1

1. As in previous submissions, Mexico asserts that the basic telecommunication services for which it has scheduled cross-border commitments are "switching and transmission services" or "transport and transmission services." As noted in paragraphs 16-20 of the United States' Oral Statement at the Second Meeting of the Panel, Mexico's interpretation of its Schedule ignores the text of the CPC codes it has inscribed. For the reasons stated in those paragraphs, the CPC codes specifically contemplate "hand off" and the joint provision of voice services. For example, CPC 75212 provides that a customer has access to both "the suppliers' and the connecting carriers' entire telephone network." Mexico's Schedule does not limit its cross-border commitment to only a portion of the service defined in the CPC codes – for example, the portion before a call or a signal is handed off to a connecting carrier's network. Mexico's cross-border commitment covers the entirety of the service as defined in the CPC codes.

2. Mexico incorrectly states, in paragraph 9 of its responses, that U.S. carriers supply "the service that transports their customers' telephone calls," rather than "telephone calls" themselves. CPC 75212 states that the scheduled service "provides the *customers* with access to the suppliers' *and connecting carriers'* entire telephone network," and covers "switching and transmission services necessary to establish and maintain *communications* between local calling areas."[1] Therefore, what a "customer" purchases from a U.S. carrier is a "communication" over the entirety of a telephone call, from its point of origin to its point of termination.

3. Mexico also argues, at paragraph 2 of its responses, that Section 3 of the *Annex on Telecommunications* supports Mexico's conclusion that its Schedule includes only commitments for "transport and transmission." The definition of "public telecommunications transport service" included in Section 3 of the *Annex* does not support Mexico's assertion. Section 3 defines this term to include transmission "between two or more points," which includes between a point in the United States and a point in Mexico.

4. As noted in paragraph 20 of the United States' statement at the second meeting of the Panel, if the service for which Mexico has inscribed commitments is indeed only "switching and transmission services" or "transport and transmission services," Mexico's commitment for commercial agencies is meaningless. Under the definition included in footnote 4 to Mexico's Schedule, commercial agencies do not themselves transmit or transport telephone calls or signals.

5. The United States notes that throughout its response to Question 1, Mexico compares the CPC descriptions of various services concerning the transport of goods with the CPC descriptions for basic telecommunications services. CPC codes 71310 and 71235, cited in

[1] Emphasis added.

paragraph 4 to Mexico's responses, address transport "of" oil, or "of" goods sent *via* mail. The things that are transported by the services involved in CPC codes 71310 and 71235 are themselves separate products. That is not the case with basic telecommunications services. A telephone call, or a "communication," as the term is used in CPC 75212, is an inseparable part of the service itself. There is no trade in telephone calls separate from the transport of telephone calls. That basic telecommunications services are different from the service concerning the transport of goods is demonstrated by the *Annex*. Section 1 notes "the specificities of the telecommunications services sector and, in particular, its dual role as a distinct sector of economic activity and as the underlying transport means for other economic activities . . ." In other words, the *Annex* draws an explicit distinction between telecommunications services as a "distinct sector" from *other* services which use telecommunications services confirming that the signal and the delivery of the signal is an integral whole. As noted above, there is no service sector for telephone calls that is separate from the transport of those calls.

Question 2(a)

6. Mexico's statement, in paragraph 17 of its response, that "all telecommunications networks are provided in this manner" does not give meaning to the phrase "supplied by a facilities based public telecommunications network." If "all telecommunications services are provided in this manner [i.e., supplied by a facilities-based network]" there would have been no reason to include the phrase in Mexico's Schedule. The United States' interpretation of the phrase, set out in its March 27 response to question 2(a), lends meaning to the phrase, by contrasting it with Mexico's commitment to commercial agencies. The United States provides more detailed comments in its observations on Mexico's response to question 2(c).

Question 2(b)

7. In paragraph 16 of its responses, Mexico suggests that "*una red publica de telecommunicaciones basada en infraestructura*" should be translated as "a public telecommunications network based on infrastructure," rather than as a "facilities-based public telecommunications network." The phrase "*basada en infraestructura*" is better translated as "facilities-based" because the latter is a term of art in the telecommunications field. For instance, the WTO's glossary of terms includes a definition for "facilities-based operator" as

> **Facilities-based service supplier (or operator)** - A telecommunications service provider owning, as opposed to leasing, networks used to provide telecommunications services.[2]

The WTO's Spanish glossary of terms includes the following definition as corresponding to "facilities-based operator:"

> ***Proveedor (u operador) de servicios con infraestructura propia*** - *un proveedor*

[2] *See* www.wto.org/english/tratop_e/serv_e/telecom_e/tel12_e.htm.

> *de servicios de telecomunicaciones que sea propietario de redes, es decir, que no las explote en arrendamiento, a fin de proporcionar servicios de telecomunicaciones.*

Question 2(c)

8. Mexico fails to answer the Panel's question, which asks what forms of supplying services would be allowed if the phrase "by a facilities based public telecommunications network" were not included in the sectoral column of Mexico's Schedule. Mexico's response, and therefore its interpretation of the sector column, suggests that the phrase adds nothing to its Schedule – a reading that is not consistent with the rules of treaty interpretation reflected in the *Vienna Convention on the Law of Treaties*. As noted by the United States in paragraph 6 of its responses, without the phrase "by a facilities based public telecommunications network," Mexico's commitments would have applied regardless whether a U.S. service supplier uses its own network in the United States to supply services between the United States and Mexico, or instead leases capacity in the United States to provide those services.

9. The United States notes that elsewhere in its responses, Mexico appears to agree that the purpose of including the phrase "by a facilities based public telecommunications network" was to enable Mexico to divide its commitments based on whether, for example, a U.S. service supplier owns telecommunications facilities *in the United States*, or instead leases those facilities from another operator *in the United States*. At paragraph 75 of its responses, for example, Mexico describes how the routing requirement applies to "US resellers" and "US facilities based suppliers."

Question 2(d)

10. Mexico provides no evidence supporting its assertion that "instalaciones" can only refer to international ports. The term "*instalaciones*" is properly translated as "facilities."[3] As the United States has demonstrated at paragraphs 23-26 of its Second Written Submission, the term "facilities" is much broader than the term "ports." Moreover, as noted above, the translation of the phrase "*basada en infraestructura*" as "facilities based" is correct, given that the latter is a term of art in the telecommunications field.

Question 3(a)

11. As discussed above, unless Mexico's Schedule means that a U.S. supplier must own or operate a "facilities based" network in the United States, the phrase "by a facilities based public telecommunications network" would be rendered meaningless.

[3] *See* www.spanishdict.com/AS.cfm?e=instalaciones.

Question 3(b)

12. Mexico's answer is not responsive to the Panel's question. The use of the phrase "this network" in the question appears to be a reference back to question 3(a). Thus, the United States understood the question to be whether the supplier must use the facilities-based network that it owns or operates for the transaction in question. Given that Mexico chose to inscribe its basic telecommunications commitments based on whether the service supplier owns telecommunications facilities or instead leases them from another operator, the "facilities-based" requirement does appear to imply that the foreign supplier must own or operate the facilities-based network on its own side of the border. The reference must be to the foreign supplier's side of the border, since Mexico prohibits foreign suppliers from owning a facilities-based network on the Mexican side of the border.

Question 3(c)

13. Mexico's answer is wholly unresponsive to the Panel's question. Moreover, Mexico's assertion that a "half circuit regime" is "incorporated in Mexico's Schedule," requires commercial presence and therefore prevents cross-border supply is based, yet again, on a misstatement of what Mexico's Schedule actually says.[4] Mexico apparently derives this argument, and the distinction between "half circuit" and "full circuit" service, from the requirement in its Schedule that international traffic "be routed through the facilities of an enterprise that has a concession." As the United States has observed on numerous occasions, however, this phrase does not require that a foreign supplier own a concession to send international traffic into Mexico. Rather, it only requires that foreign suppliers operating in the cross-border mode route that traffic through the facilities of an entity that has a concession. Mexico clearly knew how to schedule a concession requirement when it meant to do so – to enjoy market access in mode 3, Mexico's Schedule states that "[a] concession from the SCT is required." The contrast between Mexico's mode 1 and mode 3 "limitations" demonstrates that there is no concession requirement with respect to the cross-border supply of basic telecommunications services.[5]

Question 3(d)

14. While Mexico continues to argue that a private circuit cannot carry public traffic, it has failed to respond to the United States' observation[6] that Telmex in fact offers such private lines to other public network operators, not just private businesses. This reality demonstrates that the inscription on "private leased circuit services" in Mexico's Schedule does not mean what Mexico

[4] Mexico 27 March responses to questions from the Panel, paras. 29-34.

[5] As the Panel will recall, the United States does not consider that the routing restriction included under mode 1 in the market access column of Mexico's Schedule constitutes a market access limitation within the meaning of Article XVI:2 of the GATS.

[6] United States Second Oral Statement, para. 72.

now contends. The inclusion in Mexico's Schedule of "private leased circuit services" relates only to the obligation of private "network operators" in Mexico who want to exploit their networks commercially to obtain a concession, not to the ability of firms operating on a resale rather than a facilities basis in Mexico to send traffic through leased private lines obtained from a network operator that has a concession. The separate provision for "commercial agencies" under mode 3 operating on the basis of a permit, not a concession, reinforces this interpretation. Though an owner of network facilities in Mexico would need a concession in order to lease its lines to others to carry public traffic on a resale basis (*i.e.,* become the "lessor"), the firms leasing such lines (the "lessee") would not themselves need the concession. ISR does not, of course, "evade" the authorized Mexican carriers' networks as Mexico suggests in paragraph 41 of its answers; rather, commercial agencies under mode 1 would use the networks of the Mexican carriers as required by the routing restriction, but are simply not bound to send their traffic through the international switched ports subject to the cartel pricing provision of ILD Rule 13.

Question 4(a)

15. In paragraph 43 to its response, Mexico asserts that the Panel misinterprets it to have stated that a supplier must have a commercial presence in the territory of Mexico to supply basic telecommunications services on a cross-border basis. The United States notes, however, that at paragraph 56 of Mexico's February 5 responses to questions from the Panel, Mexico expressly stated that "[c]ross-border supply only occurs when the same service supplier transports a call from one country, across the border, and into the territory of another country." Whether or not this statement implies that a cross-border supplier must have a *commercial presence* on the foreign side of the border, the statement that the "same service supplier" must be on both sides of the border to deliver basic telecommunications services in cross-border mode certainly suggests that it has to operate in some fashion on the foreign side of the border.

16. In fact, the one example Mexico gives of cross-border supply from the United States into Mexico is where a U.S. supplier "has a full circuit" and "establish[es] a switch" or a "point of presence" in Mexico.[7] Mexico states that the U.S. supplier does not have a commercial presence on the Mexican side of the border in this example. Again, however, whether or not "establishing a switch" or a "point of presence" on the Mexican side of the border is a "commercial presence," "establishing a switch" or a "point of presence" certainly involves operating in some fashion on the Mexican side of the border. Mexico's interpretation therefore adds an element that is not present in Article I:2(a) of GATS, which defines the cross-border supply of a service as the supply of a *service* from the territory of one Member into the territory of any other Member because Mexico's interpretation requires that to provide basic telecommunications services in the cross-border mode, a service supplier *must* operate on both sides of the border.

[7] Mexico March 27 responses to questions from the Panel, paras. 51, 58, 76.

Question 4(b)

17. As noted above in comments on Mexico's responses to question 1, Mexico's commitments are not restricted to "switching and transmission services," "transport or transmission services," or "routing" services, as those term are used in paragraphs 48-50 of Mexico's responses.

Question 4(c)

18. As noted in its comments on Mexico's response to question 4(a), the United States does not consider that a foreign supplier can "ha[ve] a full circuit to the territory of another WTO Member," as Mexico argues at paragraph 51 of its responses, without operating on both sides of the border even assuming it does not rise to the level of a commercial presence. Requiring a supplier to "ha[ve] a full circuit" to operate in the cross-border mode suggests that the supplier *must* operate in some fashion on both sides of the border under mode 1, which is not supported by Article I:2(a) of the GATS, which provides that it is the *service* that crosses the border.

Question 4(d)

19. Throughout its responses to the Panel's questions, Mexico distinguishes between "half circuit" and "full circuit" regimes. The United States notes that those terms are not found anywhere in Mexico's Schedule. What is particularly significant about Mexico's response is its acknowledgment that cross-border supply occurs *in the absence of commercial presence*, where interconnection occurs at the border and traffic is routed through the facilities of a concessionaire.

20. Mexico's statement, in paragraph 56 of its response, that to supply services on a cross-border basis, a U.S. supplier would need to "supply telecom services over the whole of the full circuit," is similar to its earlier assertions that the "same service supplier" would have to transport a call on both sides of the border.[8] The United States notes that Mexico's interpretation is contrary to Article I:2(a) of the GATS, which defines the cross-border supply of a service as the supply of a *service* from the territory of one Member into the territory of any other Member. The services at issue in this dispute are basic telecommunications services, the nature of which does not require the service supplier to operate on both sides of the border. As explained above, the CPC code 75212, inscribed by Mexico in its Schedule, describes the scheduled service as "provid[ing] the customers with access to the suppliers' *and connecting carriers' entire telephone network.*" The Panel should therefore reject Mexico's interpretation.

21. The United States replies to Mexico's single example of cross-border supply from the United States into Mexico – "establishing a switch"[9] in Mexico – in its comments on Mexico's

[8] Mexico February 5 responses to questions from the Panel, para. 56.
[9] *Id.*, para. 58.

response to question 4(a) above.

Question 5

22. Mexico's response to this question is based upon acceptance of the notion that a telephone call or signal is a separate service from the transportation of that signal. Mexico again ignores the CPC codes inscribed in the sectoral column of its Schedule, which specifically contemplate "hand off" of the signal and the joint provision of voice services, and the purchase by a "customer" of a "communication" over the entirety of a telephone call, from its point of origin to its point of termination. The United States has demonstrated that given the CPC codes inscribed in Mexico's Schedule, Mexico's arguments regarding the narrow scope of the services to which it committed are in error. This same point applies to Mexico's arguments regarding the provisions of satellite service, which is covered by the CPC codes inscribed in Mexico's Schedule.

Question 6

23. The United States refers the Panel to paragraphs 6-13 of its oral statement at the second meeting of the Panel. In those paragraphs, the United States rebuts Mexico's entire theory, by demonstrating that the "routing restriction" included in Mexico's Schedule is not a market access limitation, is not a "concession" requirement, is not a "commercial presence" requirement, and does not require the routing of traffic through international ports. Under an interpretation that is consistent with public international law rules of interpretation reflected in the *Vienna Convention*, the "routing restriction" is a requirement that foreign suppliers send international traffic into Mexico through the facilities of an entity that has a concession. This is precisely how U.S. suppliers complete (and completed, before Mexico's WTO obligations entered into force) calls into Mexico – by "rout[ing] through the facilities of an enterprise that has a concession . . ."

24. The United States makes additional comments on new aspects of Mexico's response. To begin, the United States asks the Panel to reject Mexico's appeal to the alleged definitions of the terms "*instalaciones*" or "facilities" in Mexican law, pursuant to Articles 31(4) or 32 of the *Vienna Convention*, since Mexico itself states, at paragraph 68 of its responses, that the terms are "not defined explicitly in Mexican law." The United States fails to see how Mexican law can be instructive in these circumstances.

25. The United States also notes the circular logic in paragraph 70 of Mexico's responses. Mexico argues that because market access limitations must be inscribed in column 2 of a Member's Schedule, the inclusion of Mexico's routing restriction in column 2 of its Schedule must mean that it is a market access limitation within the meaning of Article XVI:2 of the GATS.

Question 7

26. The Panel asks whether, without the "routing restriction" and accepting existing inscriptions in the sectoral column of Mexico's Schedule, cross-border supply would be possible. Mexico states that the only aspect of its commitment that prevents U.S. suppliers from providing services on a cross-border basis into Mexico is the "routing restriction" included in the market access column of its Schedule.

27. Again, Mexico's argument that the "routing restriction" requires "traffic to be handed off at the border to a Mexican supplier" (and therefore cannot be supplied across the border) is based upon unfounded assumptions what the "routing restriction" in its Schedule actually says. As previously explained, Mexico's interpretation depends upon the "routing restriction" being interpreted to require a "concession" and therefore a "commercial presence" and that the term "facilities" be interpreted as limited to international gateway ports. Mexico has not demonstrated how this interpretation follows from the ordinary meaning of the routing restriction.

28. It is important to note that, even if Mexico were correct that its "routing restriction" required traffic to be routed through a Mexican international gateway switch (which it does not because "facilities" is a broader term than "ports"), U.S. would be *still* be supplying basic telecommunications services on a cross-border basis as the communication is crossing the border and being terminated on a connecting carrier's network, as the CPC codes inscribed by Mexico in its Schedule contemplate.

Question 8

29. The United States' comments on Mexico's response to question 8 (and in particular paragraph 75 thereto) are combined with its comments on Mexico's response to question 2(c) above.

Question 9

30. Mexico's response that a commercial agency must establish a "point of presence" in Mexico or "directly leas[e] circuits within Mexico in the name of the foreign carrier" in order to provide telecommunications services on a cross-border basis again demonstrates that, under Mexico's theory, the telecommunications service supplier must operate on both sides of the border in order to supply services on a cross-border basis. As explained above under Question 4, this theory is not supported by GATS Article I:2(a)'s definition of the cross-border supply of a service.

Question 10

31. Mexico states that in accordance with its "simple or technical meanings," the term

"interconnection" "can refer to a wide margin of access for a supplier."[10] However, the relevant inquiry is the "ordinary" meaning. The *ordinary* meaning of the definition of "interconnection" included in Section 2.1 of the Reference Paper – which is the meaning that is relevant under public international law rules of treaty interpretation reflected in Article 31(1) of the *Vienna Convention* – refers to a wide margin of access for a supplier. Specifically, Section 2.1 defines as "interconnection" all "linking" of suppliers for the purpose of enabling users to communicate – whether the suppliers are operating on a cross-border basis or are commercially present. The United States has discussed this issue extensively in paragraphs 41-59 of its Second Written Submission, and in paragraphs 27-48 of its Oral Statement at the Second Panel Meeting.

Question 11

32. Mexico's discussion of Mexican law fails to mention that the points where U.S. carriers' networks are interconnected with the network of Telmex today are "network termination points," under the definition set forth in the ILD Rules. ILD Rule 2 defines a "network termination point" as "[t]he place where the facilities and equipment of end-users are connected to a public telecommunications network, or, where appropriate, *the place where other telecommunications networks are connected thereto*."[11] Mexico has offered no rebuttal to the showing by the United States that U.S. carriers interconnect their public telecommunications networks with the public telecommunications network of Telmex.[12] As stated by ILD Rule 3, Telmex thus "interconnect[s] directly with the public telecommunications networks of other countries' operators for the purpose of carrying international traffic."

33. Mexico's discussion of U.S. law similarly fails to mention that FCC regulations require incumbent local exchange carriers to provide interconnection arrangements for the origination and termination of interexchange traffic, which includes interexchange traffic supplied on a cross-border basis, at central offices and other points.[13] Additionally, U.S. long-distance and international carriers provide interconnection arrangements at various points in their networks.[14] Under these arrangements, cross-border suppliers that do not possess market power may interconnect with U.S. international carriers at any agreed network point.[15] Cross-border suppliers with market power may interconnect with U.S. international carriers at any agreed network point on 87 routes authorized for ISR, or where the FCC International Settlements Policy has been removed.[16]

34. Mexico provides no support for its claim that "for other countries," the legal concepts "technically feasible point in the network" and "network termination points" are "only explicitly

[10] Mexico March 27 responses to questions from the Panel, para. 78.
[11] *Id.*, para. 80.
[12] U.S. First Written Submission, paras. 64-67.
[13] U.S. March 27 responses to questions from the Panel, , para. 22.
[14] *Id.*, paras.23-24.
[15] *Id.*, para. 24.
[16] *Id.*

provided for in relation to domestic interconnection."[17] Notably, the European Communities' Interconnection Directive, which defines "interconnection" in similar fashion to the Reference Paper, includes no such limitation.[18] The EC Directive requires organizations with obligations to provide interconnection to "meet all reasonable requests for access to the network including access at points other than the network termination points offered to the majority of end-users."[19] The European Commission has stated that "all points of interconnection open to national operators should also be open to authorized operators in other Member States who wish to deliver cross-border traffic."[20]

Question 12

35. Mexico states that "[c]ost oriented rates should permit an adequate rate of return," and that both direct and common costs should be recovered.[21] The United States has shown that to the extent that the phrase "having regard for economic feasibility" applies to "cost-oriented rates," it means that interconnection rates should cover both direct and common costs, and that New Zealand requested the inclusion of the "economic feasibility" language in the Reference Paper partly because of its concern to cover common costs.[22] Mexico offers no rebuttal to this point.

36. The United States has also demonstrated, and Mexico has not contested, that under the cost standard in Mexican law, carriers must charge rates that cover all their costs, including both direct and common costs and a reasonable rate of return, and that the interconnection rates charged by Telmex to U.S. suppliers substantially exceed the rates charged for the same elements of interconnection sold domestically.[23] Therefore, under Mexican law, the interconnection rates charged by Telmex to U.S. suppliers already recover cost, including a reasonable rate of return. Mexico again makes no attempt to show otherwise.

[17] Mexico March 27 responses to questions from the Panel, para. 86.
[18] The European Communities' Interconnection Directive defines "interconnection" as "the physical and logical linking of telecommunications networks used by the same or a different organization in order to allow the users of one organization to communicate with users of the same or another organization, or to access services provided by another organization." Directive 97/33/EC, Interconnection in Telecommunications, Art. 2(1)(a), available at http://europa.eu.int/ispo/infosoc/telecompolicy/en/dir97-33en.htm. Section 2.1 of the Reference Paper defines interconnection as "linking with suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier."
[19] Directive 97/33/EC, Interconnection in Telecommunications, Art. 4(2), available at http://europa.eu.int/ispo/infosoc/telecompolicy/en/dir97-33en.htm.
[20] *Commission Recommendation on Interconnection in a Liberalised Market, Part 1 – Interconnection Pricing*, Explanatory Memorandum (January 8, 1998), Sect. 5.1, available at http://www.europa.eu.int/ISPO/infosoc/telecompolicy/en/r3148-en.htm.
[21] Mexico March 27 responses to questions from the Panel, paras. 87, 90.
[22] U.S. February 5 responses to questions from the Panel, para. 74 and footnote 37.
[23] U.S. March 27 responses to questions from the Panel, para. 26; U.S. February 5 responses to questions from the Panel, para. 75; U.S. First Written Submission, paras. 124-39.

Question 14

37. Mexico wrongly asserts that Section 2.2(b) of the Reference Paper permits the recovery of the cost of universal service obligations.[24] The United States has shown that the terms "*basadas en costos*" and "cost-oriented" require a relationship between interconnection rates and the cost incurred in providing interconnection, rather than the cost of universal service obligations.[25] "Cost-based pricing" is "the general principle of charging for services in relation to the cost of providing *these services*."[26] In contrast, the cost of universal service obligations is the cost of providing access to telecommunications in accordance with a country's universal service objective. Such costs are not attributable to interconnection and, therefore, may not be included in cost-oriented interconnection rates.

38. Mexico's assertion that it may properly recover universal service costs through interconnection charges[27] also ignores the requirements of Section 3 of the Reference Paper that universal service obligations be "administered in a transparent, non-discriminatory and competitively-neutral manner and . . . not more burdensome than necessary for the kind of universal service defined by the Member." The United States has shown that Mexico's asserted basis for the recovery of universal service costs meets none of those requirements.[28] Any such recovery is not transparent, because universal service obligations are hidden in interconnection rates paid to the major supplier. Similarly, such recovery contravenes the requirements for non-discrimination and competitive neutrality, because it burdens only suppliers purchasing interconnection, and particularly cross-border suppliers, with the funding of universal service obligations.[29] Any such recovery also fails to comply with the requirement that universal service obligations be "not more burdensome than necessary for the kind of universal service defined by

[24] Mexico March 27 responses to questions from the Panel, para. 96.
[25] U.S. March 27 responses to questions from the Panel, para. 28
[26] *See* http://www.wto.org/english/tratop_e/serv_e/telecom_e/te112_e.htm (emphasis added). Furthermore, Section 2.2(b) of Mexico's Reference Paper requires that a supplier purchasing interconnection "need not pay for network components or facilities that it does not require for the [interconnection] service to be provided." This language provides relevant context for the interpretation of "*basadas en costos*," and makes clear that the scope of all interconnection charges is limited to the specific network components and facilities required for the interconnection service provided, and not other unrelated costs. U.S. March 27 responses to questions from the Panel, para. 28.
[27] *Id*.
[28] U.S. March 27 responses to questions from the Panel, paras. 29, 51-55.
[29] The U.S. Federal Communications Commission has stated that "universal service obligations that are levied disproportionately on foreign-originated calls clearly violate these [Reference Paper] principles." *International Settlement Rates*, 12 FCC Rcd. 19806, para. 87 (1997), available at http://www.fcc.gov/Bureaus/International/Orders/1997/fcc97280.txt. The European Commission has stated that "[t]he purpose of a universal service charge is to ensure that the social cost of universal service in a Member State is shared by the players on that market. It is not appropriate for the social costs in one Member State to be subsidized by telephone users in all other Member States. Thus, contributions to universal service should not be imposed either directly or indirectly on organizations which merely interconnect to deliver traffic to a Member State and do not actually offer telecommunications services in that Member State." *Commission Recommendation on Interconnection in a Liberalised Market, Part 1 – Interconnection Pricing*, Explanatory Memorandum (January 8, 1998), Sect. 5.2, available at http://www.europa.eu.int/ISPO/infosoc/telecompolicy/en/r3148-en.htm.

the Member." Because Mexico has not defined a universal service obligation, it cannot show what level of charges is "necessary" to meet that obligation. Therefore, levying charges allegedly associated with that obligation is, by definition, "more burdensome than necessary for the kind of universal service defined by the Member."

39. Mexico also incorrectly contends that the recovery of the costs of universal service obligations is "only possible by means of the rates, including the interconnection rates, which [carriers] charge."[30] Mexico informed the OECD otherwise in October 2001, stating that "[i]n 1999 several meetings were held between the [Federal Telecommunications Commission] and the carriers in order to define the concept of universal service, as well as to establish a new financing mechanism that would apply to all carriers. Several agreements were reached at those meetings. . . . Several options were proposed about the mechanism of contribution, allocation and management of the resources of the universal service fund."[31] Mexico further informed the OECD that "[t]he [Federal Competition Commission] pointed out the benefits of establishing a neutral funding mechanism in which all carriers that benefit from the network's expansion would contribute proportionately to such fund. *The funding mechanism must be set independently from interconnection rates*."[32]

40. The United States is not aware that Mexico has taken any further steps to establish any universal service obligation or universal service funding mechanism. However, Mexico acknowledges in its OECD submission that the costs of universal service obligations may be recovered in other ways than through interconnection rates, and that its Competition Commission has recommended that a funding mechanism independent from interconnection rates should be established.

41. Mexico also attempts to justify its claim that U.S. carriers and consumers should pay for its infrastructure roll-out with a highly misleading "apples to pears" comparison of *U.S. industry* traffic to Mexico with *Telmex's* total international minutes and revenues.[33] Neither Mexico's needs for infrastructure development nor Mexico's claim that the PSTN "cost must be shared between all the beneficiaries" provides any justification for Telmex's providing interconnection to U.S. suppliers at rates 27, 120 and 183 percent more than Telmex charges to Mexican suppliers for the exact same PSTN network components.

42. Moreover, Mexico notably ignores the fact that, while Telmex's international minutes "only increased 68 percent" from 1994-2001, *total Mexican industry* international minutes increased by *172 percent* in this period -- from the 2.622 billion minutes reported by Telmex for

[30] Mexico March 27 responses to questions from the Panel, para. 96.
[31] *Access Pricing (with a focus on telecommunications)*, Submission of Mexico to OECD Working Party No. 2 on Competition and Regulation, DAFFE/CLP/WP2/WD(2001)33 (October 5, 2001), pg. 9 (Exhibit US-65).
[32] *Id.*, pg. 10 (emphasis added).
[33] *See* Mexico replies, para. 97, footnote 19.

1994 to the 7.138 billion total industry minutes reported by Cofetel for 2001.[34] Similarly, the international revenues of Telmex cited by Mexico for 2001 are not the same as total Mexican industry revenues, because they do not include the revenues of other Mexican carriers. Mexico has not challenged the showing by the United States that Telmex remains highly profitable, and that its high prices for international services and above-cost settlement rates indicate that its international services provide substantial profits.[35]

43. Mexico erroneously contends that the 209 percent increase in U.S. industry traffic to Mexico in this period was caused by infrastructure roll-out in Mexico. As the United States described in its First Written Submission,[36] increased U.S. outbound international traffic volumes are the result of lower U.S. consumer prices. From 1994-2001, U.S. carrier average revenue per minute on the U.S.-Mexico route declined from 93 cents to 29 cents -- *i.e.*, by 69 percent.[37] During this eight-year period, Telmex and other Mexican carriers charged U.S. carriers more than $8 billion to terminate calls in Mexico.[38] At the same time, Mexico added only 5.3 million local lines during these years, and increased teledensity only from 9.4 to 13.7 lines per hundred population.[39] As noted by the United States in its First Written Submission,[40] this is about a third of the average teledensity for the Americas of 35.2, and below the teledensity in Argentina, Belize, Brazil, Chile, Columbia, Costa Rica, Panama, Suriname and Uruguay. These data demonstrate that above-cost interconnection rates do not lead to infrastructure roll-out and increased teledensity. Competition, along with, if Mexico chooses, the imposition of a universal service obligation that is consistent with the requirements of Section 3 of the Reference Paper, will help Mexico achieve infrastructure roll-out and increased teledensity.

Question 15

44. In developing a "cost-ceiling" methodology based on current technology and on Telmex's current pricing of the network components used to provide interconnection to U.S. suppliers, the United States assumed only an 18.5 percent usage rate,[41] rather than the level of approximately 50 percent asserted by Mexico.[42] The higher actual utilization rate cited by Mexico further confirms the very conservative nature of the pricing assumptions and methodologies proposed by the United States in developing the cost-ceiling.

[34] *See* Exhibit US-3 (Cofetel data).
[35] U.S. First Written Submission, Attachment A, para. 7.
[36] *Id*., para.11 and footnote 12.
[37] *See* FCC Section 43.61 International Traffic Data Reports 1994-2001, Table A1, available at http://www.fcc.gov/wcb/iatd/intl.html.
[38] *Id*.
[39] *See* Exhibit US-3 (Cofetel teledensity data).
[40] U.S. First Written Submission, Attachment A, para. 7, footnote 266.
[41] U.S. First Written Submission, para. 130, footnote 124.
[42] Mexico March 27 responses to questions from the Panel, para. 101; Mexico February 5 responses to questions from the Panel, para. 226.

Question 16

45. Mexico provides no information to support its claims that the adoption of cost-oriented termination rates would result in "huge financial liabilities to foreign carriers."[43] Mexico merely lists its settlement rates with various countries, and provides no information concerning traffic volumes or payments.[44] In fact, Mexico's traffic volumes to all the countries it lists are very small, which suggests limited payments and fewer financial liabilities.

46. Mexico offers no rebuttal to the response by the United States that cutting Telmex's rates for the interconnection of international traffic to the level of prices for the same services charged domestically would not lead to the "doomsday" scenario asserted by Mexico, since under Mexican law those prices already cover costs, including a reasonable rate of return.[45] Mexico also offers no rebuttal to the response by the United States that with approximately 80 percent of Mexico's international traffic being sent to the United States, and with a large imbalance in traffic flows resulting in net U.S. outflow payments of almost $500 million in 2001, Telmex would not make "net outflow" payments if it charged cost-oriented rates to terminate this traffic.[46]

47. Mexico incorrectly asserts that its carriers "would have to pay" the settlement rates it lists for twelve countries that are not subject to the Reference Paper requirement for cost-oriented rates.[47] Mexican carriers may take advantage of much lower publicly-available wholesale rates to those countries, such as those advertised by a major operator from points of interconnection in Los Angeles, New York or London.[48] Those rates are as low as 14.75 cents to Bangladesh, 17.9 cents to Bolivia, 5.8 cents to Brazil, 4.9 cents to Slovakia, 12.4 cents to the Philippines, 20.5 cents to India, 2.45 cents to Malaysia, 19 cents to Mauritius, 21.5 cents to Pakistan, 17.1 cents to Sri Lanka, 8.8 cents to Thailand, 11.9 cents to Turkey, and 18.3 cents to Venezuela.[49] Similar or lower rates are also available to other countries.

48. Mexico thus fails to substantiate its "doomsday" scenario. Mexico also has contended that carriers in countries not subject to the Reference Paper will lower their interconnection rates to cost-oriented levels, which is not consistent with its further claim repeated here that countries with commitments under the Reference Paper to provide cost-oriented rates will experience "similar asymmetries."[50] In any event, in most of the countries subject to the Reference Paper, the accounting rate regime has been largely superseded by ISR and other types of interconnection

[43] *Id.*, para. 238.
[44] Mexico March 27 responses to questions from the Panel, para. 105.
[45] U.S. Second Oral Statement, para. 36.
[46] *Id.*, para. 37.
[47] Mexico March 27 responses to questions from the Panel, para. 106.
[48] Available at www.arbinet.com. *See* U.S. First Written Submission, para. 146.
[49] www.arbinet.com ("ask" prices as of April 11, 2003).
[50] Mexico Second Written Submission, para. 35; Mexico March 27 responses to questions from the Panel, para. 107.

arrangements.[51]

49. There also is no basis for Mexico's argument that the requirement of cost-oriented interconnection rates for cross-border suppliers would "eliminate" incentives for carriers in developed countries to invest in less developed countries.[52] In fact, the encouragement of investment in less developed countries requires the exact opposite of Mexico's approach. The subsidization of major supplier carriers in these countries through above-cost accounting rates, which is what Mexico seeks to encourage, is a disincentive to invest in new entrant carriers that must compete against the largest recipients of these subsidies.[53] The United States considers that investment is best encouraged in all countries by ensuring cost-oriented and reasonable interconnection rates and nondiscriminatory and competitively-neutral universal service obligations, as required by the Reference Paper.

50. There also is no basis to Mexico's claims that the GATS Preamble and Article IV create a "special situation" for developing countries like Mexico, by allowing them to "only liberalize after 'their domestic services capacity and its efficiency and competitiveness' have been strengthened."[54] Nothing in the GATS permits specific commitments by developing countries to be interpreted any differently than specific commitments by developed countries. The GATS Preamble and Article IV merely seek to facilitate the "increasing participation of developing country members in world trade" by encouraging "different Members" to make "negotiated specific commitments" relating to areas of particular concern to developing countries. Those provisions thus have no relevance here.

Question 17

51. The definition of "interconnection" included in Section 2.1 of the Reference Paper applies to interconnection arrangements for suppliers using all modes of supply and supplying all basic telecommunications services, and covers a wide variety of different commercial, contractual and technical situations that are subject to different regulatory requirements.[55] Therefore, the mere existence of differences between the different types of arrangements that are covered by this broad definition does not show that one or the other of these arrangements is not "interconnection."

[51] *See, e.g.,* ITU Trends in Telecommunication Reform 2000-2001, Section 8.2 (Exhibit MEX-59); http://www.fcc.gov/ib/pd/pf/isr.html (listing 83 countries that the FCC has authorized for ISR arrangements with foreign dominant carriers).
[52] Mexico March 27 responses to questions from the Panel, para. 108.
[53] *Cf.*, ITU Trends in Telecommunication Reform 2000-2001, Section 3.1.3.4 (Exhibit MEX-14) (excessive interconnection prices "can provide a pool of revenue which the dominant firm can use to subsidize predatory pricing in an effort to drive competitors out of the market.").
[54] *See* Mexico Second Oral Statement, paras. 17-19. Mexico March 27 responses to questions from the Panel, para. 97.
[55] U.S. February 5 responses to questions from the Panel, para. 39.

52. Mexico nonetheless continues to assert non-existent differences between accounting rates and interconnection. Mexico alleges that accounting rate agreements reflect "[c]ooperation," while interconnecting carriers are in competition with one another,[56] but again does not address the repeated showing of the United States that U.S. cross-border suppliers that originate services in-country through home-country direct and similar call reversal services, operating within Mexico's view of an accounting rate regime, are direct competitors to Mexico's national carriers.[57] Mexico also again fails to address the repeated showing of the United States that a major supplier has an incentive to impose a competitive disadvantage on a foreign cross-border supplier if an affiliate of the major supplier competes with the cross-border supplier – as many such affiliates were expected to do following a successful outcome of the basic telecommunications negotiations.[58] Mexico's theories are also refuted by the fact that long distance service suppliers do not necessarily compete with local service suppliers of interconnection, and that even Mexico has no requirements in its domestic laws or regulation requiring "competition" as a prerequisite to interconnection.[59]

53. Mexico's assertion that accounting rate agreements are always the result of "mutual agreement between private parties" notably ignores its own Rule 13 requirement that only the concession holder with the largest market share may negotiate with foreign operators rates that are then binding on other concession holders, thus prohibiting those concession holders from entering into different "mutual agreements" concerning rates.[60]

54. Similarly, Mexico's assertion that domestic interconnection agreements, unlike accounting rate agreements, do not provide "full access to the whole country," ignores the domestic "off-net" *interconnection* agreements that provide terminating interconnection to the whole country of Mexico to Mexican suppliers purchasing off-net interconnection from Telmex.[61] Mexico also fails to take account of the "double transit" domestic interconnection arrangements required by the European Commission, which "allow[] access to all customers on the incumbent's network ('national' level interconnection)."[62]

55. Mexico attempts to invent differences between an interconnection regime and an accounting rate regime by comparing a Verizon local-to-local *interconnection* agreement with a Telmex-SBC *interconnection* agreement, which Mexico inaccurately refer to as an "accounting

[56] Mexico March 27 responses to questions from the Panel, para. 109
[57] U.S. February 5 responses to questions from the Panel, para. 51.
[58] *Id.*, para. 52.
[59] *Id.*, para. 51
[60] Mexico March 27 responses to questions from the Panel, para. 109.
[61] *Id.*
[62] *Commission Recommendation on Interconnection in a Liberalised Market, Part 1 – Interconnection Pricing*, Explanatory Memorandum (January 8, 1998), Sect. 4.1, available at http://www.europa.eu.int/ISPO/infosoc/telecompolicy/en/r3148-en.htm..

rate agreement."[63] The alleged differences between the regimes largely reflect the different requirements of a local-to-local interconnection arrangement and a long distance-to-long distance interconnection arrangement. As the United States has explained, the terms of interconnection agreements vary depending on the specific circumstances and needs of the suppliers.[64]

56. For example, Mexico alleges that "assurance of payment" conditions and "audit" provisions of a local-to-local interconnection agreement can "*Never*" be a part of an accounting rate agreement, but cites nothing that would prohibit the inclusion of such conditions, should the parties believe them necessary.[65] Other local-to-local interconnection conditions that Mexico alleges can "*Never*" be a part of an accounting rate agreement, such as access to 911 local emergency services and access to local service Operations Support Systems, apply only to local services.[66] Those conditions are not relevant to long distance service requiring interconnection, either domestic or international, and there is no need for those conditions in long distance interconnection agreements.

57. Notwithstanding any such differences that arise from the local or long distance nature of the services being provided, those differences do not modify the definition of "interconnection" under Section 2.1 of Mexico's Reference Paper obligations. Agreements that deal with "linking with suppliers" to "allow the users of one supplier to communicate with users of another supplier" all deal with "interconnection."

58. Likewise Mexico's previous attempt to distinguish between interconnection charges and settlement rates on the asserted grounds that settlement rates are payable only on traffic imbalances while access charges are "payable on the termination of every telephone call" is equally unfounded.[67] Settlement charges accrue on all minutes, even if they are paid only on the imbalance. Additionally, domestic interconnection agreements may also provide for "net" payments arrangements, under which the two carriers set off their interconnect payments, with one carrier remitting the balance to the other carrier where there is a two-way traffic arrangement.[68] "Settlement" charges, "access" charges and "termination" charges are all "interconnection" charges under Section 2.1.

59. Similarly, Mexico's assertion that termination services are not interconnection[69] is refuted by the plain language in Section 2.1 of Mexico's Reference Paper definition of "interconnection."[70] Additionally, the European Commission has described call termination as

[63] Mexico March 27 responses to questions from the Panel, paras. 110-11. Mexico's error was pointed out in the U.S. Second Oral Statement, para. 47.
[64] U.S. February 5 responses to questions from the Panel, para. 39.
[65] Mexico March 27 responses to questions from the Panel, para. 110.
[66] *Id.*
[67] Mexico Second Oral Statement, para. 12.
[68] U.S. February 5 responses to questions from the Panel, para 44.
[69] Mexico Second Oral Statement, para. 72.
[70] U.S. February 5 responses to questions from the Panel, para. 53.

"the most basic interconnection service provided."[71] In its submissions during the negotiations, Australia stated that termination of international traffic is interconnection, and there is no indication that any other Member objected to this characterization.[72]

Question 20

60. In paragraph 119 of its responses, Mexico concedes that "[t]o date, Telmex has been the concessionaire with the highest volume of outbound traffic on all international routes and, therefore, the only carrier authorized under Mexican law to negotiate settlement rates." As noted in paragraph 41 to the United States' March 27 responses to questions, however, whether Telmex or another operator negotiates the settlement rate is not the critical question. Under ILD Rule 13, the operator with the highest volume of outbound traffic negotiates the settlement rate alone, unrestrained by competitive forces. The result is an incentive to negotiate the highest rate possible, ignoring the requirement under Section 2.2(b) of the Reference Paper for rates that are "*basadas en costos*." The fact that Telmex is the sole negotiator on *all* routes, without any competitive pressure, simply aggravates this effect, and also supports the United States' claim that ILD Rule 13 is evidence of Mexico's failure to maintain appropriate measures to prevent Telmex from engaging in anti-competitive practices, within the meaning of Section 1.1 of the Reference Paper.

Question 22

61. The United States agrees with Mexico that whether or not there is a violation of Article II of the GATS "would depend on the facts and circumstances of the case."[73] With this statement, Mexico concedes that accounting rates are not necessarily discriminatory, despite its statement earlier in these proceedings that "accounting rates *per se* cannot comply with the 'non-discriminatory . . . rates' requirement in Section 2.2(a) of the Reference Paper inscribed in Mexico's Schedule."[74]

Question 23(b)

62. Mexico considers that its measures need not comply with Section 3, since it does not use

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[71] *Id. See also Commission Recommendation on Interconnection in a Liberalised Market, Part 1 – Interconnection Pricing*, Explanatory Memorandum (January 8, 1998), Sect. 3.1, available at http://www.europa.eu.int/ISPO/infosoc/telecompolicy/en/r3148-en.htm..

[72] *Communication from Australia-Telecommunications: Termination Services*, S/NGBT/W/4 (October 24, 1994), pg. 2 ("telecommunications termination services are the services which network operators provide each other with when they allow access to their networks through interconnection."); *Communication from Australia-Telecommunications: Termination Services-Addendum*, S/NGBT/W/4/Add.1 (April 21, 1995), para. 7 ("[T]ermination services are the services which network operators provide each other when they allow access to their networks through international interconnection.").

[73] Mexico March 27 responses to questions from the Panel, para. 122.

[74] Mexico February 5 responses to questions from the Panel, para. 252.

the phrase "universal service obligation" to characterize them. Whether or not Mexico uses the phrase "universal service obligation" to characterize particular measures, to the extent those measures are in fact universal service obligations, they must comply with Section 3 of the Reference Paper.

63. In fact, during the course of this dispute, Mexico has justified its actions with reference to its universal service-like objectives. In response to the United States' claims that Mexico has failed to ensure cost-based interconnection, as required by Section 2.2(b) of the Reference Paper, Mexico asserts that Telmex's rates are justified under Section 2.2(b) given its need to achieve goals that it expressly states are associated with universal service – "strengthen[ing] . . . domestic telecommunications infrastructure and service capacity" and "infrastructure roll-out."[75] Similarly, in response to the United States' claims that Mexico has failed to maintain appropriate measures to prevent anti-competitive practices by major suppliers, as required by Section 1.1 of the Reference Paper, Mexico asserts that its regulatory measures are necessary and consistent with Section 1.1 because they "further the development of [Mexico's] domestic telecommunications market, including . . . promoting the development of its telecommunications infrastructure"[76] – goals that it associates with universal service.

64. The United States reiterates that if Mexico seeks to justify its failure to ensure cost-based rates and failure to maintain measures to prevent anti-competitive practices by appealing to universal service-like objectives, it must do so consistent with the terms set out for universal service obligations in Section 3 of the Reference Paper. In its March 27 response to questions 13 and 23(b), the United States demonstrated that Mexico has not done so.

65. Mexico's claim that there is no legal relationship between Sections 1 and 3 of the Reference Paper ignores the explicit "anticompetitive" reference in Section 3, a term only used otherwise in the Reference Paper in Section 1. Section 1 sets out requirements for the pro-competitive regulation of major suppliers' behavior. In light of this similarity in terminology, Section 3 is best understood as providing limited exceptions to Section 1, allowing governments to have measures to fulfill legitimate universal service requirements provided that the preconditions of Section 3 are satisfied. If the measures requiring such universal service programs do not comply with Section 3, however, those practices do not benefit from the presumption against "anti-competitiveness" included in Section 3.

66. With regard to Mexico's argument that its ILD rules are beyond the scope of Section 1 of the Reference Paper, the United States notes that Section 1 clearly refers to the "measures" that a member is required to maintain to prevent anticompetitive practices. For this reason, Mexico is wrong in contending that Section 1 does not "regulate measures by a Member" but only "regulates . . . practices by a major supplier or by suppliers." The wording of Section 1.1 shows that the relevant obligation concerns appropriate "measures for the purpose of preventing suppliers . . . from engaging in or continuing anti-competitive practices." The Reference Paper,

[75] Mexico Second Oral Statement, paras. 80-84.
[76] Mexico February 5 Responses to Questions from the Panel, para. 262.

like other WTO provisions, addresses the obligations of Member governments rather than private parties. A violation of Section 1 arises not from the anticompetitive practices standing alone, but from the failure of the Member's government to adopt measures to prevent them. Here, Mexico has failed to abide by Section 1 because its ILD rules require, rather than prevent, clear and obvious anti-competitive practices involving price-fixing to maintain termination prices above cost.

Question 24

67. Mexico finally admits that no other WTO Member maintains a measure similar to Rule 13, and fails to identify any WTO Members, other than purportedly the United States, which it claims "have a de facto 'Rule 13.'"[77] Mexico then repeats its false charges that U.S. rules and policies are similar to those of Mexico, and again makes no attempt to rebut the evidence put forward by the United States showing that the U.S. International Settlements Policy requires nondiscriminatory rather than uniform rates, that ISP nondiscrimination and proportionate requirements apply only to arrangements with dominant carriers that maintain high rates, and that all U.S. carriers negotiate rates independently.[78]

Question 25

68. Mexico attempts to justify its anti-competitive ILD rules by alleging that the United States "is acting as if new operators should compete in order to carry incoming international traffic calls instead of competing for end-customers in Mexico."[79] Mexico misstates the U.S. position. In the view of the United States, Mexico's WTO obligations require it to allow new carriers to compete *both* to carry inbound international calls *and* for customers in Mexico.

69. Likewise, Mexico implies that it is wrong for the United States to assert that carriers that have made "minimal" investments in Mexican infrastructure should be allowed to engage in "unlimited" competition.[80] The United States maintains that a carrier's ability to compete, either for inbound international calls, Mexican customers or in any other area, is limited only by the limitations, if any, in Mexico's Schedule. Mexico cites no requirement in its Schedule that links a supplier's ability to compete for inbound international calls to that supplier's level of investment in Mexican facilities. Additionally, Mexico does not restrict competition for inbound international traffic merely for those suppliers with an undefined level of "minimal investment." Instead, Mexico's ILD rules restrict competition for inbound international traffic for all commercially present suppliers, irrespective of their level of investment in Mexican facilities.

[77] Mexico March 27 responses to questions from the Panel, para. 128.
[78] *See* U.S. First Oral Statement, paras. 40-41; U.S. February 5 responses to questions from the Panel, paras. 96-97; U.S. Second Written Submission, paras. 93-95; U.S. Second Oral Statement, paras. 83-87.
[79] Mexico March 27 responses to questions from the Panel, para. 132.
[80] *Id.*, para. 132.

70. As such, Mexico's ILD rules cannot be justified on the basis of promoting investment. Similarly, the United States has shown that the ILD rules also cannot be justified by Mexico's inconsistent prior arguments that they are necessary to protect new entrant carriers from predatory conduct by Telmex, and to protect Telmex from predatory conduct by the new entrant carriers.[81] The United States considers that Mexico would promote investment in telecommunications by implementing fully its WTO commitments and allowing all carriers to build market share by competing freely with Telmex.[82]

Question 26

71. Mexico reiterates its assertion that the services at issue in this dispute are "transport and transmission." It argues that these services cannot be supplied, under Section 5 of the Annex, through access to and use of another Member's public telecommunications transport network and services, since the services at issue in this dispute are themselves "transport and transmission services." However, as the United States has demonstrated in paragraphs 16-20 of its oral statement at the second meeting of the Panel, and in its rebuttal comments to Mexico's response to question 1 above, Mexico's interpretation ignores the text of the CPC codes it has inscribed in its Schedule. Mexico's Schedule does not limit its cross-border commitment to only a portion of the service defined in the CPC codes – for example, the portion before a call or a signal is handed off to a connecting carrier's network. Mexico's cross-border commitment covers the entirety of the service which, as defined in the CPC codes, covers the entirety of a telephone call's path, from its point of origin to its point of termination. This is what the "customer" contemplated in CPC 75212 purchases – "access to the suppliers' *and connecting carriers'* entire telephone network," and "switching and transmission services necessary to establish and maintain communications between local calling areas."

72. In its comments to Mexico's response to question 1, the United States refutes Mexico's comparison (repeated in paragraph 137 of its responses) of a telephone call to the transport of oil, or of goods sent *via* mail.

Question 27

73. The United States agrees that uniform settlement rates that are merely not cost-based do

[81] *See* U.S. March 27 responses to questions from the Panel, paras. 62-63.

[82] There also is no basis for Mexico's earlier assertion that GATS Article VIII contemplates Mexico's restrictions on competition through the ILD rules, and therefore somehow precludes any challenge to such measures under Article 1 of the Reference Paper. Article VIII only applies to monopolists and "exclusive service suppliers, where a Member, formally or in effect, (a) authorizes or establishes a small number of suppliers and (b) substantially prevents competition among those suppliers in its territory." Mexico has placed no limitation on the number of concessionaires, either formally or in effect, and Article VIII therefore does not apply. Mexico's Schedule contains no Article XVI:2(a) limitation on the number of service suppliers, and as of September 2002 Mexico had granted no fewer than twenty-seven concessions for domestic long-distance service, eleven of which are authorized to operate international ports. (Mexico First Written Submission, paras.59, 67).

not violate Section 5(a) of the Annex, as long as those rates are "reasonable." The United States requests the Panel to refer to its March 27th response to question 27 from the Panel for the reasons why it considers that Mexico does not ensure U.S. suppliers access to and use of public telecommunications transport networks and services on reasonable terms and conditions.