CINCO Telecom Corp.

December 20, 2004

Ms. Gloria Blue
Executive Secretary
Trade Policy Staff Committee
ATTN: Section 1377 Comments
Office of the United States Trade Representative
1724 F Street, N.W.
Washington, DC 20508

Re: USTR Section 1377 Request for Comments Concerning Compliance with Telecommunications Trade Agreements

Dear Ms. Blue:

CINCO TELECOM Corp. ("CINCO TELECOM") hereby responds to the request of the Office of the United States Trade Representative ("USTR") for comments pursuant to Section 1377 of the Omnibus Trade and Competitiveness Act of 1988, 19 U.S.C. Section 3106, concerning compliance of the World Trade Organization ("WTO") Basic Telecommunications Agreement and other telecommunications trade agreements.[1]

CINCO TELECOM, a U.S. company based in Florida, offers international long distance services, targeted to the Hispanic community, primarily by selling such services through prepaid calling cards. It operates in Florida, New York, New Jersey and Connecticut. CINCO TELECOM is the U.S. subsidiary of ORBITEL S.A. E.S.P. ("ORBITEL"), a telecommunications carrier in Colombia that provides domestic and international long distance services, as well as broadband, data and Internet services.

As described more fully below, the above-cost interconnection charges that are charged by local fixed and mobile carriers to terminate international calls on their respective networks violate Colombia's WTO commitments, specifically the commitments relating to interconnection in the WTO Reference Paper. These interconnection charges result in high international long distance termination rates for U.S.-Colombia calls, which harm U.S. carriers, such as CINCO TELECOM, and U.S. consumers.

[1] *See* 69 Fed. Reg. 68,439 (Nov. 24, 2004); Section 1377 of the Omnibus Trade and Competitiveness Act of 1988, *codified at* 19 U.S.C. § 3106.

WTO Reference Paper Commitments and Colombia's National Legislation

Colombia's national legislation, as well as its WTO commitments, require that interconnection be provided at non-discriminatory, reasonable, and cost-oriented rates. Specifically, Section 2.2 of the WTO Reference Paper, provides that interconnection should be provided "(a) under non-discriminatory terms, conditions and rates and of a quality no less favorable than that provided for its own like services or for like services of non-affiliated services suppliers; and (b) in a timely fashion, on terms, condition (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility."[2]

Furthermore, Colombian legislation requires that in establishing interconnection rates, telecommunications operators should observe the principles of (i) non-discrimination; (ii) cost-orientation; and (iii) transparency.[3]

Interconnection Rates in Colombia

Interconnection Rates Imposed by Fixed Local Network Operators

A study issued by the Colombia's Telecommunications Regulatory Commission (the "CRT") in December 2003 determined that interconnection rates permit local fixed operators to recoup close to 150% of the costs effectively incurred as a result of the use of their networks (the "CRT Study").[4] This demonstrates that interconnection rates are not cost-oriented. In Colombia, access charges are an international long distance operator's primary expense, constituting approximately 42% of their total costs.[5] International long distance operators in Colombia pay access charges to interconnect with local networks at an average cost of US$0.021 per minute.[6]

Certain U.S. operators terminate international long distance traffic with unlicensed operators in Colombia that purchase local lines at residential or commercial retail rates – an average of one cent per minute -- and circumvent the local access charges.[7] This

[2] World Trade Organization, Fourth Protocol to the General Agreement on Trade in Services, "Telecommunications Services: Reference Paper" (hereinafter "WTO Reference Paper"), at §2.2 (Apr. 2, 1996), http://www.wto.org/english/news_e/pres97_e/refpap-e.htm.

[3] Law 142 of 1994.

[4] "Revisión de los Cargos de Acceso a las Redes de Telecomunicaciones en Colombia" [Review of Network Interconnection Rates in Colombia], CRT, December 2003, at 29.

[5] Total costs include access charges paid to fixed local operators to terminate calls on a local or local extended network, as well as transport charges paid to fixed local operators. *See* Orbitel website, www.orbitel.com.

[6] Calculated based on an average of (i) the access charges set by the CRT and (ii) the percentage of traffic terminated on each fixed local network in Colombia.

[7] CRT Resolution 575 (2002).

practice is illegal in Colombia, and harms carriers like CINCO TELECOM that terminate international long distance traffic with licensed Colombian carriers. Above-cost access charges are one of the causes of the above-mentioned arbitrage practice and must be addressed by the Colombian Government to ensure compliance with its WTO commitments.

Mobile Termination Rates

Colombia's mobile termination rates are below the rates that exist in many other countries; however, they still are not cost-oriented. For example, end users pay an average retail rate of US$0.048 per minute, while long distance operators pay US$0.109 per minute. This demonstrates that mobile operators are charging termination rates that are significantly above-cost in contravention of Section 2.2 of the WTO Reference Paper. Moreover, unlike in other countries, the mobile termination rate has been increasing rather than decreasing in Colombia. Between 2002 and 2005, the mobile termination rate increased 109% per year, from US$0.025 to US$0.109 (see Table 1 below).

Table 1: Mobile Termination Rates (2002-2005)[8]

(per minute)	**Dec.-02**	**Dec.-03**	**Dec.-04**	**Jan.-05**	**Compound Annual Growth Rate(CAGR) (Dec.02.-Dec.04)**
Mobile Access Charge (Colombian Peso)	72,2	117,9	173,7	253,0	87%
Exchange Rate (Colombian Peso / US$)	2864	2778	2350	2330	
Mobile Access Charge (US$)	US$0.025	US$0.042	US$0.074	US$0.109	109%

There is no sound basis for these yearly increases particularly given that in most countries mobile termination rates have been decreasing

CINCO TELECOM would be pleased to provide any further information that would be helpful to USTR.

Sincerely,

/s/

Juan Guillermo Vélez
President and Chief Executive Officer

[8] CRT Resolution 463 (2001).