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December 17, 2004

Ms. Gloria Blue
Executive Secretary
Trade Policy Staff Committee
ATTN: Section 1377 Comments
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

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

Dear Ms. Blue:

On behalf of AT&T Corp. ("AT&T"), I am pleased to respond to the request 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 implementation of the World Trade Organization ("WTO") Basic Telecommunications Agreement.

AT&T greatly appreciates USTR's important work to encourage WTO Members to meet their commitments in basic telecommunications and value-added network services under the WTO General Agreement on Trade in Services ("GATS"). USTR's efforts to ensure compliance with those commitments have improved foreign market opportunities for the U.S. telecommunications industry. For this year's Section 1377 review, AT&T again highlights the significantly above-cost rates charged to U.S. carriers to terminate international calls on wireless networks in many countries, which clearly violate WTO requirements for cost-oriented and reasonable termination rates. AT&T also remains very concerned by continuing market access barriers in India and Mexico, which are contrary to these countries' WTO obligations.

Excessive Mobile Termination Rates: The very high rates U.S. carriers pay to terminate calls on foreign mobile networks are a huge and fast-growing problem and are reversing progress toward cost-based international termination rates in the markets of many U.S.

trading partners. These high termination fees inflate the settlement payments of AT&T and other U.S. carriers and cause higher prices to U.S. consumers. In the last three years, the number of countries in which AT&T is required to pay mobile surcharges (*i.e.*, in addition to the fixed termination rate) to its foreign correspondents has increased from approximately 30 countries in 2001 to approximately 140 countries today.

The rapidly increasing volume of U.S.-outbound international calls terminated on foreign mobile networks exacerbates the adverse effect of high mobile termination rates. Global mobile subscribership and mobile traffic volumes are increasing at a very rapid rate, including in the developing world. *TeleGeography* reports that mobile lines comprise a majority of global lines.[1] As a result, the percentage of international traffic terminating on mobile phones is also growing rapidly.

The rates to terminate traffic on a foreign mobile network are frequently far higher than the rates to terminate traffic on a fixed network in the same foreign market, including in otherwise competitive countries where wireline interconnection prices are often below $0.02/minute. The most recent EU Implementation Report states that fixed-to-mobile termination charges in many EU Member States remain on average *eight times* higher than the average fixed-to-fixed termination charge.[2] Even if generous assumptions are made about the costs of mobile technology, infrastructure and any absence of economy of scale efficiencies, there is no legitimate justification for the difference between fixed and mobile termination rates.[3] These high mobile termination rates are clearly unreasonable and far exceed cost-oriented levels. An AT&T study filed with the FCC in February 2004 shows that a very conservative cost ceiling for terminating U.S. international calls on mobile networks in 65 countries, including the costs of international transmission, international switching, domestic transport and termination on the mobile network, is, on average, no higher than $0.083.[4]

Market forces provide no constraint on high mobile termination rates, which are the direct result of the market power of mobile network operators in countries where the Calling Party Pays ("CPP") system is employed. Under CPP, the person who initiates the call to the mobile phone pays the mobile operator for the mobile termination, while the called party, who is a customer of the mobile operator, is not charged for the termination. Because the consumer who subscribes to the CPP mobile operator is not the same consumer who pays the CPP mobile operator for call termination, there is no market constraint on CPP mobile operators to reduce high call termination fees.[5]

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[1] *TeleGeography 2004*, *International Voice Carriers and Traffic, Mobiles*.

[2] Commission of the European Communities, *European Electronic Communications Regulation and Markets 2004 (10th Report)*, Commission Staff Working Paper, Vol 1., at 65.

[3] *See* Ovum, *Mobile Termination Rates*, at 14-16 (2000).

[4] Letter dated February 5, 2004 to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, from Douglas Schoenberger, AT&T, IB Docket Nos. 02-324 & 96-261.

[5] There is no effective demand-side substitute for the calling party or the called party, because the potential substitutes (*e.g.*, placing calls to fixed rather than mobile lines, sending short text messages rather than voice calls, or utilizing call-back services) would undermine the quality and convenience factors that create demand in the broader mobile market. There also is no effective supply-side substitute, which would require a competing operator to have access to the details of

Many regulators have found that the CPP regime impedes the operation of market forces to reduce rates. (See, for example, *European Commission Recommendation 2003/31/EC on relevant product and service markets within the electronic communications sectors susceptible to ex ante regulation*, OJ L 114, Aug. 5, 2003, Explanatory Memorandum at 32-34.) Similarly, a number of recent studies have found that the use of the CPP system encourages higher rates. (See, for example, *Call Termination Fees: The U.S. In Global Perspective*, J. Scott Marcus, at 8 (CPP "tends to create perverse economic incentives. Carriers tend to be motivated to set termination rates vastly in excess of real costs, because in doing so they raise, not their own costs, but rather the costs of their rivals").[6] An ITU survey has found average fixed to mobile interconnection rates to be approximately 20 times higher under CPP regimes than under Receiving Party Pays ("RPP") regimes. ITU, *Mobile Overtakes Fixed: Implications For Policy and Regulation* (2003) at 25, Fig. 9.

There is a distinct market for call termination on each mobile network, and CPP mobile operators have market power in those markets and are therefore "major suppliers" under the WTO Reference Paper. A CPP mobile operator plainly has "the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for basic telecommunications services as a result of: (a) control over essential facilities; or (b) use of [their] position in the market," as required by the Reference Paper. Indeed, foreign mobile operators amply demonstrate their "ability to affect the terms of participation" in the relevant market when they set international mobile termination rates at unreasonably high levels. Similarly, because foreign mobile operators control all call termination on their networks, resistance to requested rate increases carries the risk of service-affecting retaliatory action including the blocking of calls.

AT&T is particularly concerned by the excessive rates paid to terminate U.S. calls on mobile networks in *Belgium, Bulgaria, Denmark, Estonia, Finland, Germany, Greece, Hungary, Iceland, Italy, Netherlands, New Zealand, Peru, Portugal, Romania* and *Switzerland*. Although national regulators have taken some action to address high mobile rates in some of these countries, much more needs to be done by all these countries to comply with their WTO obligations to ensure that interconnection rates for international calls terminating on mobile networks are both cost-oriented and reasonable. In many of these countries -- Belgium, Bulgaria, Estonia, Greece, Iceland, Netherlands, New Zealand, Peru, Portugal, Romania and Switzerland -- AT&T pays 20 cents or more to terminate calls on mobile networks. In the majority of these countries, calls are terminated on fixed networks for about 2 cents.

USTR also should address the following market access barriers in Mexico and India, which are contrary to these countries' WTO commitments.

Mexico: The $18 billion telecommunications market in Mexico has significant potential for growth, but is being harmed by the many barriers remaining to telecommunication

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the end user's SIM card, and the mobile operator can simply refuse to share this information with other operators.

[6] Available at: ftp://ftp.zew.de/pub/zewdocs/div/IKT04/Paper_Marcus_parallel_Session.pdf.

competition in Mexico that should be removed to bring Mexico toward compliance with its WTO obligations.

Interconnection: Mexico has failed to ensure the availability of cost-oriented interconnection arrangements with Telmex, its major supplier, as required by Section 2.2 of the Reference Paper.

Off-Net Interconnection: For interconnection of long distance calls to Telmex's network for cities that Telmex has refused to open to competition or that are otherwise not subject to equal access interconnection arrangements, or for cities where a new competitive carrier does not have a network, Telmex charges that competitive carrier a "resale" tariff rate. The resale rate is currently about 6.5 cents per minute, well above the level of a cost justified rate. The resale rate is based, without cost-justification, on a 25% discount from Telmex's commercial rates to customers. Similar regional interconnection is routinely available in competitive countries for 2 to 3 cents per minute.

Local Interconnection: Mexico has failed to ensure timely, non-discriminatory, cost-based interconnection for local competitors. Although Telmex has recently provided interconnection to several carriers, Telmex has imposed several restraints to prevent full and fair competition. For example, local number portability is not provided, despite the requirements of Mexican law. In addition, Telmex has imposed a discriminatory "bill and keep" system that excludes data traffic that benefits only Telmex. The lack of interconnection quality standards results in routing and programming failures for competitors' local service traffic.

Anti-Competitive Practices: Mexico has failed to maintain appropriate measures to prevent anti-competitive practices by Telmex, as required by Mexico's commitments under Section 1 of the Reference Paper. Mexico has failed to set competitive safeguards and Cofetel has failed to enact dominant carrier regulation, even though it has the ability to do so. Enforcement of dominant carrier safeguards is long overdue in Mexico. Telmex has denied competitors phone lines needed to provide service, priced its own services at predatory rates, refused to allow other carriers to interconnect to its network, and has withheld fees it owes competitors. Furthermore, Mexico allows Telmex to offer DSL services while excluding its competitors by refusing to unbundle the local loop, even for bit stream access.

Similarly, Mexico has not enforced its regulations requiring Telmex to offer a billing and collection service to its competitors under non-discriminatory terms and conditions. Telmex has refused either to provide such requested services or to disclose the terms and conditions under which it provides such services to its affiliates. Cofetel has not responded to numerous complaints filed as early as 1997.

Prohibition on Foreign Control: Mexico should eliminate its prohibition on foreign control of Mexican "concessionaires" (facilities-based carriers), which also is contrary to Mexico's WTO obligations.

India. In January 2003, India's telecommunications regulator, the TRAI, implemented an Access Deficit Charge ("ADC") in connection with its Telecommunications Interconnection

Usage Charge (IUC) Regulation, 2003. The TRAI has stated explicitly that although implemented as part of the IUC Order, the ADC is not an "interconnection charge," which is defined separately in the order as comprising termination or origination charges and carriage charges. Rather, the ADC is a supplemental collection to subsidize socially desirable services, and the TRAI clearly presents the ADC as a component of its overall Universal Service regime.[7]

Many industry participants have raised serious concerns with the ADC, and in particular with the high ADC applied to international long distance traffic, originally of 5.0 Rupees ($0.104), which was between two and ten times higher than the ADC rates for domestic long distance traffic (R0.50 to R2.50 depending on distance). In response, the TRAI issued a revised Regulation in October 2003. While the new regulation offers some limited structural improvements on the ADC component, it still relies on an imprecise calculation of the access deficit to be recovered and continues to place a highly unreasonable and discriminatory burden on international service providers and their customers. The revised international ADC is 4.25 Rupees ($0.093) -- which is as much as *fourteen* times higher than the ADC rates for domestic long distance traffic (R0.30 to R0.80 depending on distance).

Currently, the TRAI is considering again whether to modify the ADC regime. In recent months, the Indian government has discovered that some of the leading ILD operators are illegally profiting, by adding the ADC surcharge to settlement costs with other carriers, but then failing to report that contribution-eligible revenue to the Indian government. The TRAI is receiving critique for establishing a system with insufficient controls, and an unprecedented arbitrage opportunity that is distorting traffic flows. As AT&T has urged for two years now, the TRAI should eliminate the ADC altogether.

India's ADC regime fails to comply with its WTO commitment to administer universal service obligations in a transparent and non-discriminatory manner.[8] There is no justification for the higher ADC rates for international calls, which impose the same costs on the local network as domestic long-distance calls, nor does TRAI assert any cost-based justification in its orders. The TRAI also fails to administer this universal service obligation in a transparent manner and thus provides no assurance that any claimed access deficit is properly calculated or that any ADC receipts are used solely to subsidize legitimate services and for no anticompetitive or improper purpose.

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[7] *See, e.g.*, TRAI, *The Telecommunication Interconnection Usage Charges (IUC) Regulation, 2003 (1 of 2003)* (rel. Jan. 24, 2003), at Explanatory Memorandum, ¶ 5. ("The Access Deficit Charge (ADC) is assessed by fixing an affordable level for rental/local call charges, special concessionary local call charges in the rural areas, provision of free calls, and any other below cost tariffs that the Regulator may need to specify to make the Basic telecom services affordable to the common man to promote both Universal Service and Universal access as per NTP'99"); *TRAI, The Telecommunication Interconnection Usage Charges (IUC) Regulation, 2003 (2 of 2003)* (rel. Oct. 29, 2003) at Explanatory Memorandum, ¶ 89 ("Further, the ADC regime should ideally be merged with the USO regime over time, say in about 3 to 5 years.").

[8] World Trade Organization, Fourth Protocol to the General Agreement on Trade in Services, *India – Schedule of Specific Commitments Supplement 3, Reference Paper* at ¶ 3. (April 11, 1997).

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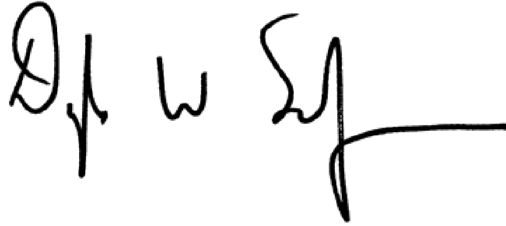
AT&T would be pleased to provide any further information that would be helpful to the Committee.

Respectfully submitted,



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