

MEXICO – MEASURES AFFECTING TELECOMMUNICATIONS SERVICES

(WT/DS204)

CLOSING STATEMENT OF THE UNITED STATES
AT THE SECOND MEETING OF THE PANEL

March 13, 2003

1. First, I want to thank you and the other members of the Panel for your attention and hard work in this dispute, which is reflected in your questioning. I believe that we have thoroughly discussed all the issues in this dispute, so I will not repeat those substantive arguments now except to note one important point.

2. During this second meeting of the Panel, it seems clear that Mexico now admits that its international interconnection rates are not *basadas en costos*. In fact, Mexico is now arguing that the terms “reasonable” and “economic feasibility” allow the major supplier, Telmex, to include charges for infrastructure development or “universal service,” and that Telmex’s international interconnection rates *do* indeed include such charges. As we have explained in our written submissions and our answers to the Panel’s questions, the inclusion of such hidden charges is inconsistent with Section 2.2(b) of the Reference Paper, which provides that the “supplier need not pay for network components and facilities that it does not require for the service to be provided.” Such charges are also inconsistent with Section 3, which requires that such charges be administered in a transparent manner and that they are not more burdensome than necessary.

3. It should be clear that the United States considers that Mexico’s arguments regarding the interpretation of its Schedule, Section 2 of the Reference Paper, Section 1 of the Reference Paper and the Annex are not supported by the text of those agreements, and should be rejected by the Panel.

4. In fact, when considered as a whole, Mexico’s arguments really mean that very little progress was made on telecommunications during the Uruguay Round or the 1997 negotiations. According to Mexico,

- the Annex does not apply to the supply of basic telecommunications services, thus the Annex can be put aside;
- it is impossible to make a cross-border commitment due to the nature of basic telecommunications services, so mode 1 cannot apply (we are looking forward to

Mexico's explanation of its "whole circuit" theory where the supplier is not commercially present);

- it is impossible to make a resale commitment due to the nature of basic telecommunications services;
- Section 2's cost standard means, for developing countries, that any amount can be charged for international interconnection if it is for infrastructure development (which of course makes the cost standard so open-ended that it becomes meaningless) (such an interpretation would also write Section 2.2(b) and Section 3 out of the Reference Paper); and finally
- Mexico's interpretation of Section 1, that a Member does not have to maintain appropriate measures to prevent anti-competitive practices if that is not its policy, would also write Section 1 out of the Reference Paper.

5. According to Mexico, the only commitment undertaken is mode 3, commercial presence for facilities-based operators. This is obviously an unreasonable interpretation.

6. So, from either a broad perspective or a detailed analysis of the issues, Mexico's arguments do not withstand scrutiny. For the reasons stated during this meeting and in our written submissions, we urge the Panel to find that Mexico has failed to comply with its obligations under Sections 1 and 2 of the Reference Paper, and Section 5 of the Annex on Telecommunications.