RESULTS OF 2003 "SECTION 1377" REVIEW OF TELECOMMUNICATIONS TRADE AGREEMENTS

USTR annually reviews the operation and effectiveness of U.S. telecommunications trade agreements pursuant to Section 1377 of the Omnibus Trade and Competitiveness Act of 1988, based on public comments filed by interested parties.

This year, in addition to country-specific complaints, U.S. industry again highlighted three trade and regulatory concerns in a number of countries: 1) high rates for connecting calls to mobile and fixed-line networks in foreign markets; 2) lack of reasonable access to leased lines; and 3) lack of independent, effective regulators able to tackle these and other issues that impede competition in foreign markets.

Despite encouraging signs of progress in many countries, sustained monitoring and engagement with trade partners on these issues will be required on an ongoing basis. Additional information on key issues and country-specific complaints follows.

Mobile termination rates in EU, Japan, Argentina, Australia, Netherlands and Peru

The high wholesale cost of completing calls onto mobile networks in foreign countries continues to hinder U.S. telecommunication suppliers seeking to offer competitively priced services. Given the large and growing number of mobile subscribers around the world, reasonable connections to such networks becomes increasingly important to ensuring overall growth of telecommunications services. Estimates that up to 21 percent of international traffic now terminates on mobile networks[1] indicates the breadth of potential concern. Regulators around the world (including in the U.S.) have begun investigating whether high wholesale rates demonstrate instances of abuse of market power. Such abuse would potentially fall within the scope of regulatory commitments made by a broad range of WTO members intended to ensure reasonable access to telecommunications networks.[2]

There are encouraging signs that WTO members are beginning to grapple with this issue. For example, in the United Kingdom and Italy, regulators have conducted a detailed analysis of what would constitute reasonable mobile termination rates. And, in Peru, the regulator is reportedly seeking cost information from operators in connection with this issue.

In other markets where high rates have been identified as a problem, USTR encourages similar

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[1]Source: Telegeography, quoted in FCC Notice of proposed rulemaking, paragraph 48 http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-02-285A1.pdf

[2]e.g. commitments relating to the GATS Annex on Telecommunications and regulatory commitments relating basic telecommunications ("Reference Paper" commitments).

analysis and consideration of appropriate responses. This includes countries such as Germany, the Netherlands, Switzerland, and Argentina. In some of these markets (e.g. Argentina) there have also been allegations that international calls terminating on mobile networks are charged significantly more than comparable domestic long distance calls, an allegation subject to ongoing review.

In some countries, mobile termination rates have declined notwithstanding the absence of regulatory intervention. For example, in Japan, NTT DoCoMo reduced rates around 12 percent last year, and 5.5 percent this year. Despite these declines, however, there is a lack of transparency in Japan regarding a standard for reasonableness for such rates. USTR has encouraged the Japanese authorities to clarify the basis for their decision to accept such rates. Operators in Japan face the additional impediment of the long-standing official toleration of discrimination in the right to set retail rates for calls terminating onto mobile networks. Japanese authorities appear to have recognized this problem and have begun taking steps to address it. In Germany, authorities have indicated that their reason for not regulating mobile termination rates is an expectation that rates will continue to decline and that German rates will drop to the lower end of EU rates.

Below are indicative examples, based on current data, of the range of termination rates found in key markets.[3] To put these rates in perspective, retail mobile rates in the U.S. (which include origination, termination, and, often, long-distance charges as well) are offered at below $.07 per minute.[4]

Country	**Mobile Termination rate (per minute, in $ U.S.)**
United Kingdom (cost-based proposed rate):	$ .075
Japan	$ .103
Australia	$ .13
Germany	$ .16
Italy	$ .165
France	$ .17
Argentina	$ .18
Peru	$. 205
Switzerland	$ .275

USTR will continue to monitor this issue closely in key markets. Where there is evidence of

[3] Sources: CompTel comments to USTR; OFTEL; RegTP (Germany); www.NTTDoComo.com, based on exchange rates from March 2003.

[4] See www.tmobile.com

persistently excessive rates and national authorities are unable or unwilling to address the issue, USTR will consider further steps.

Fixed line interconnection rates in Japan and the Dominican Republic

Japan

The Japanese government's recent decision to raise NTT East and West interconnection rates by up to 12 percent (from a base already double comparable rates in the EU and U.S.), is a major setback for the development of competition in the Japanese market. Japanese authorities have provided little evidence that costs have increased, and justifying a rate increase based on the revenue needs of the government-owned NTT East and West suggested an absence of impartiality. In addition, a requirement that interconnection rates be uniform, despite the government's own conclusion that costs in the two regions differed, also raised questions about compliance with the WTO's cost-oriented standard. The United States will seek Japan's justification on the consistency of this decision with its WTO commitments. Since the new rates will expire in two years, the United States will continue to press for a fundamental revision of Japan's interconnection rate structure through bilateral regulatory reform talks.

Dominican Republic

Over the past year, USTR has repeatedly raised concerns about the decision of the Dominican Republic to mandate interconnection rates for international calls at a level fifty percent above the commercially negotiated rates previously in effect. The new rates have not yet been fully implemented and USTR will continue to seek a delay until the Dominican Republic can adequately demonstrate the need for such increases, based on credible cost data. To date, despite repeated USTR requests, the Dominican Republic has not provided such data. USTR is also concerned that recent increases in domestic interconnection rates have not been clearly justified in terms of the Dominican Republic's WTO commitment to ensure cost-oriented rates. USTR will continue to engage the Dominican Republic on these issues.

Leased line provisioning and pricing in Australia, France, Germany, Mexico, Singapore, and Switzerland

USTR received complaints that France and Germany have failed to address unreasonable delays and discriminatory action by former monopoly providers with respect to provisioning times for local access leased lines. In addition, commentators cited Australia, France, Singapore and Switzerland for unreasonably high rates for these lines. In Mexico, the former monopoly operator Telmex, with the approval of the Mexican government, has refused to supply U.S. companies leased lines for the supply of international voice services, in violation of its WTO commitments.

Reasonable access to leased lines are critical for competitors in any telecommunications market –

particularly for providing the "last mile" link competitors need to reach large customers. An inability to obtain these connections at reasonable rates and in a timely, non-discriminatory manner can significantly slow competitive entry. All countries cited have WTO commitments to ensure reasonable access to such lines.

Provisioning in Germany and France

Despite improvements in Deutsche Telekom's (DT) performance, USTR is disappointed that Germany has failed to establish a firm legal basis for ensuring non-discriminatory access to leased lines, due to judicial delays instigated by DT. USTR is following current legislative proposals in Germany to provide the regulator with adequate authority to implement such rules with interest. Efforts to improve the timeliness of provisioning and adherence to non-discriminatory terms in France will also be an area USTR will continue to monitor.

Pricing of leased lines in Australia, Singapore and Switzerland

Unreasonably high prices of leased lines in many markets (particularly in Australia, Singapore and Switzerland), are adversely affecting U.S. suppliers in these markets. Evidence that rates charged in these markets are multiples of rates in the U.S. and "best practice" markets such as Sweden indicates that competitive pressures in these markets have failed to bring users the benefits of reasonable pricing. For example, rates in Singapore appear to be six times more than "best practices" rates. Rates in Australia are three times more than "best practices" rates.[5] USTR encourages national regulators to develop benchmarks for leased line rates in order to enforce a standard of reasonableness, consistent with the obligations in the GATS Annex on Telecommunications.

Independent Regulator

Lack of an independent regulator with adequate authority has been the Achilles heel of competition in telecommunications markets throughout the world. Addressing this problem has been identified as a priority matter in China, France, Germany, India, Japan, Mexico, South Africa and Switzerland. An independent regulator is also a necessary condition for adequate implementation of WTO commitments. Aspects identified as necessary to bolster the effectiveness and independence of regulators includes strong enforcement authority, transparent procedures with adequate notice and comment, and full privatization of government-owned operators.

In addition to pursuing these goals in the context of ongoing bilateral dialogues, USTR has sought to incorporate them in Free Trade Agreements recently negotiated with Chile and Singapore, and intends to continue doing so in ongoing FTA negotiations with other countries. In addition, USTR will pursue similar goals in the context of ongoing WTO services

[5]CompTel comments available at www.ustr.gov.

negotiations.

Other Country Specific Allegations

A number of country-specific complaints have been raised against certain countries, many of which require additional monitoring in order to better assess compliance with trade commitments.

Antigua and Barbuda A potential violation by the Government of Antigua and Barbuda of its WTO commitments, relating to access to its mobile wireless market, now appears to be resolved. Based on steps taken by the Government of Antigua and Barbuda, new investment and broader service offerings by U.S. suppliers in this market should be possible.

Brazil Complaints about access to leased lines and regulatory transparency continue to be raised in relation to Brazil. The ongoing WTO services negotiations provides Brazil an opportunity to commit to ensuring a regulatory regime that will address such issues and improve the investment climate for this sector.

Canada Internet service providers have complained about inadequate access to high-speed data transport services provided by Canadian cable companies. In response to these complaints, the Canadian regulator opened a proceeding to address this issue. Because Canada (unlike the U.S.) classifies these services as public telecommunications services, its commitments under the GATS Annex on Telecommunications (relating to reasonable and non-discriminatory access) appear to apply. USTR will monitor this proceeding to ensure consistency with WTO obligations.

China China's implementation of its market access commitments in basic and value-added telecommunications will be the subject of ongoing monitoring, as will full implementation of its regulatory commitments. On the latter, the key focus will be development of an independent regulator. In the value-added services sector, USTR will seek to ensure that China offers foreign-affiliated suppliers the right to offer a scope of services similar to that offered by domestic value-added suppliers.

India Although India has recently made progress in liberalizing market access in its telecommunications sector, U.S. suppliers remain concerned that the Indian regulator is not addressing competitive issues in an impartial manner. U.S. suppliers have also raised concerns about a new proposal to institute a 10 cent per minute surcharge on international calls. USTR continues to seek details on the nature of this proposal, and its consistency with India's trade commitments.

Korea USTR continues to oppose the Government of South Korea's stated goal of mandating a national standard for the delivery of mobile Internet services ("WIPI"). Addressing the negative effects of such a mandate is the subject of ongoing consultations with the Government of Korea.

Korea has pledged not to impose such a mandate pending the outcome of these consultations. In addition to enforcing existing trade disciplines relating to this specific problem, this issue has reinforced the U.S. goal of seeking trade commitments to ensure operator choice of technology in Free Trade Agreements and in the WTO.

Mexico In addition to prohibiting competition in international services and failing to ensure U.S. suppliers access to leased lines (now subject to WTO dispute settlement proceedings) complaints persist about ineffective regulatory oversight in Mexico. Despite proven discrimination by the former monopoly supplier Telmex in areas such as numbering plans and interconnection quality, Mexican authorities have failed to use their available authority to curb such abuses. Draft legislation to address such issues is now being considered in Mexico but opposition from Telmex makes passage uncertain, clouding the investment climate in this sector.

South Africa Concerns relating to inadequate regulatory oversight appear to be hindering new investment in South Africa's telecommunications sector. Ongoing initiatives in the WTO and in FTA negotiations may provide an opportunity to address such issues. Based on its current plans, South Africa also appears to be at risk of failing to meet its WTO commitment to permit the resale of basic telecommunications services, scheduled to come into effect this year. USTR will closely monitor this issue and encourage South Africa to fully comply with this commitment.