HOLDINGS, INC.

NII HOLDINGS, INC.
10700 Parkridge Boulevard, Suite 600
Reston, VA 20191
703-390-5100 Fax 703-390-5101

December 21, 2007

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, D.C. 20508

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

Dear Ms. Blue:

Pursuant to Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. § 3106) ("Section 1377"), NII Holdings, Inc. hereby responds to the request of the Office of the United States Trade Representative ("USTR") for comments regarding compliance with U.S. telecommunications trade agreements.[1]

NII Holdings is a publicly traded U.S. company, providing mobile communications services to consumers in Latin America. Headquartered in Reston, Virginia, NII Holdings operates in Argentina, Brazil, Chile, Mexico, and Peru, and currently serves nearly 4.4 million mobile subscribers in the region.

As the main U.S. investor in mobile telecommunications operations the region, NII Holdings firmly believes that USTR's actions in encouraging compliance with international trade commitments in the area of telecommunications have been an invaluable tool to improve the investment conditions of U.S. companies in Latin America.

In these Section 1377 comments, NII Holdings focuses on difficulties that its subsidiaries are encountering in competing in the mobile services market in Peru and Mexico, which run counter to telecommunications trade commitments made by both countries under bilateral agreements with the United States and under the World Trade Organization ("WTO").

---

[1] See 72 Fed. Reg. 222, 65109 (Nov. 19, 2007).

In Peru, Nextel Peru is being affected detrimentally by significantly above-cost mobile termination rates imposed by the regulator, Organismo Supervisor de la Inversión Privada en Telecomunicaciones ("OSIPTEL"). In addition, for nearly half of 2007, OSIPTEL's operations have been severely hindered due to the resignation of three OSIPTEL Board members whose vacancies remained unfilled. These vacancies have affected OSIPTEL's ability to take regulatory actions and are directly affecting Nextel Peru's ability to do business, as its legitimate administrative challenges to the above-cost termination rates adopted by OSIPTEL are still pending.

In addition, NII Holdings' subsidiary, Nextel Mexico, is encountering excessive market entry requirements inconsistent with Mexico's trade commitments. Unjustifiable delays in Mexico's licensing process, a conduct that has raised USTR concern in prior Section 1377 reviews, continue to affect Nextel Mexico's ability to obtain licenses for the provision of fixed and mobile wireless access and data transmission services ("local service licenses"). These local service licenses would allow Nextel Mexico to directly interconnect its digital trunking services with existing fixed and mobile telephony providers. Similarly, Nextel Mexico is also encountering unjustified delays in obtaining renewal of several of its existing digital trunking licenses.

1. Peru's breach of telecommunications trade commitments

The United States–Peru Trade Promotion Agreement Implementation Act ("U.S.-Peru TPA"), signed into law by the President on December 14, 2007, calls for USTR to certify Peru's compliance with its newly acquired trade commitments. The following sections describe specific instances evidencing Peru's shortcomings in complying with certain obligations contained in the U.S.-Peru TPA, as well as under the WTO framework. We trust this information will aid USTR in its certification activities and urge it to closely scrutinize the issues addressed below, taking into account their effects on Peru's compliance with existing and newly acquired trade commitments.

1.1 Peru continues to have excessively high mobile termination rates

Mobile termination rates in Peru continue to be substantially above cost in breach of its WTO Reference Paper commitments[2] to ensure that "major suppliers" such as Telefónica Móviles, S.A. and América Móvil Perú S.A.C.[3] provide interconnection on terms, conditions, and cost-

[2] WTO, Fourth Protocol of the GATS, "Telecommunications Services: Reference Paper" ("WTO Reference Paper"), at § 2.2 (Apr. 2, 1996).

[3] A "major supplier" is one "which 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 its position in the market." WTO Reference Paper, Definitions.

"Essential facilities," on the other hand, are "facilities of a public telecommunications transport network or service that: (a) are exclusively or predominantly provided by a single or limited number of suppliers; and (b) cannot feasibly be economically or technically substituted in order to provide a service." WTO Reference Paper, Definitions.

oriented rates that are non-discriminatory.[4] Moreover, these above-cost rates are also contrary to Peru's commitment under the U.S.-Peru TPA to ensure that suppliers of public telecommunications services in its territory provide interconnection at "reasonable rates".[5] NII Holdings has raised this issue previously in prior Section 1377 comments, and although we believe USTR intervention has been decisive in achieving a reduction of the initially exorbitant mobile termination rates in Peru, OSIPTEL has failed to implement cost-based mobile termination rates in Peru.

Despite the fact that on November 21, 2005, OSIPTEL issued Resolution No. 070-2005-CD/OSIPTEL, ("Resolution No. 70") which establishes a cap on mobile termination rates, the reductions were imposed over an excessively long glide path (Table 1) and **are based on 2004 costs rather than current costs, which are substantially lower.**

Table 1. Res. No. 70 – Reduction of mobile termination rates based on 2004 cost data (2006-2009)				
Mobile Operators	Jan. 1– Dec. 31, 2006	Jan. 1– Dec. 31, 2007	Jan. 1 – Dec. 31, 2008	Jan. 1 – Dec.31, 2009
América Móvil	0.1804	0.1555	0.1305	0.1056
Nextel	0.1772	0.1491	0.1210	0.0929
Telefónica Móviles	0.1770	0.1487	0.1204	0.0922
Simple Average	0.1782	0.1511	0.1240	0.0969

Note: Simple average based on year end 2006 market shares.
Source: OSIPTEL Resolution No. 70

NII Holdings recognizes that OSIPTEL's efforts are a step in the right direction; however, they fall short of ensuring cost-based mobile termination rates in Peru. As such, termination rates in Peru remain unreasonable as they are ***not based on current costs.*** Major suppliers in Peru offer on-net calls (the rate charged to their own subscribers for making calls within their respective networks) at significantly lower rates than the wholesale rates established by OSIPTEL for terminating off-net traffic (traffic originated on a third party network). Table 2 presents publicly offered on-net rates charged by Telefónica Móviles, S.A. and América Móvil Perú S.A.C., showing that on-net calls are over 64% lower than the termination rates established by OSIPTEL. Similarly, it should be noted that USTR has used on-net rates as a benchmark to

In the case of Peru, Telefónica Móviles, S.A. is a major supplier in the mobile communications market. According to OSIPTEL data, in September 2007 it had a share of 61% of the mobile market in Peru. Similarly, América Móvil Perú S.A.C. also falls within this category due to its control of essential facilities -namely the second largest mobile communications network in Peru serving 36% of subscribers.

[4] The WTO has determined that cost-oriented rates are "defined in relation to known costs or cost principles" and should be "founded on cost." See WTO, Report of Panel "Mexico – Measures Affecting Telecommunications Services" (April 2, 2004), at 178.

[5] U.S.-Peru TPA, at Article 14.3.1(a). ("Each Party shall ensure that suppliers of public telecommunications services in its territory provide, directly or indirectly, interconnection with the suppliers of public telecommunications services of another Party at reasonable rates.")

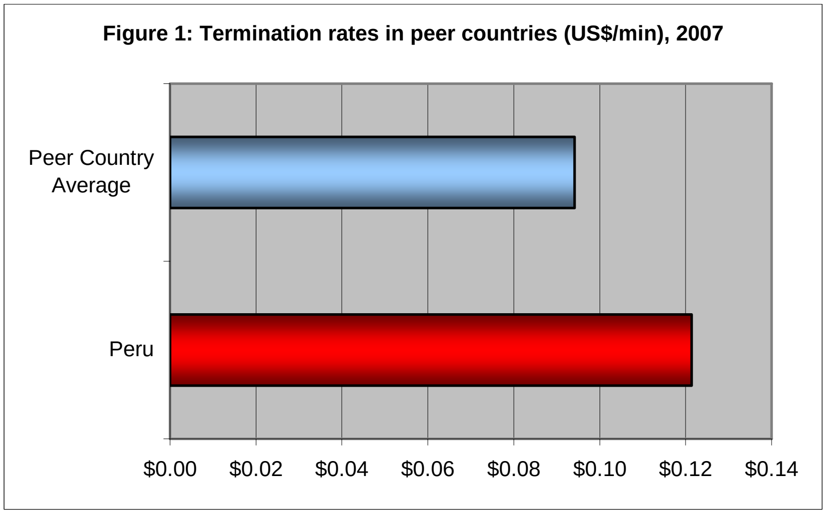
determine compliance with WTO Reference Paper commitments of establishing cost-based interconnection rates.[6]

Table 2. Difference between publicly offered on-net charges and mobile termination rates established by OSIPTEL 2007 (US$/min)

Mobile Operators	Lowest on-net charges	Mobile termination rate	Difference
América Móvil	0.0558	0.1555	-64.09%
Telefónica Móviles	0.0528	0.1487	-64.48%

Source: Telefónica Móviles, S.A. and América Móvil Perú S.A.C.[7]

Moreover, a benchmark comparison with countries of similar GDP per capita shows that rates in Peru are on average 38% higher than in peer countries for 2007; the equivalent of nearly US$0.03 per minute. (Figure 1 below)



Source: Telecommunications Management Group, Inc.
Note: The selected peer countries include Albania, Algeria, Colombia, Dominican Republic, Ecuador, Guatemala, Fiji, Macedonia, Peru, Tunisia, and Thailand.

In addition, the use of long glide paths to reduce above-cost mobile termination rates – such as the one adopted in Peru – allow "major suppliers" to continue charging excessive, above-cost rates for terminating traffic on their networks. For instance, in a recent report on mobile

[6] USTR, *Results of the 2007 Section 1377 Review of Telecommunications Trade Agreements*, at 5 ("USTR urges COFETEL to ensure that – at a minimum – Telcel (…) immediately offers a wholesale rate for terminating calls on its network that is no higher than the rate it charges its own retail customers to terminate within the Telcel network (e.g. which, for some calling plans, is as low as 7 cents per minute, compared with the 12 cents it currently charges other networks for the same function.).")

[7] Telefónica Móviles, Planes Tarifarios, Plan RPM Professional 33, available at http://www.movistar.com.pe/default2.aspx?id=35, and Claro, Empresas. Bolsa de Minutos, Bolsa de Minutos Cualquier Destino (CDI), available at http://www.claro.com.pe/.

termination rates in the United Kingdom, the Office of Communications (Ofcom) noted that "where a provider has SMP [significant market power] and, in the absence of regulatory controls, has set charges materially above cost, a smooth glide path which reduces charges over an extended period might be considered to allow that provider to continue to set excessive charges. The more excessive the charges, the longer such a glide path will allow above-cost charges to be levied." [8]

Similarly, and as noted by NII Holdings in its 2007 Section 1377 response, when the lengthy glide path adopted in Peru was originally proposed by OSIPTEL, Ambassador David Gross, United States Coordinator for International Communications and Information Policy, U.S. Department of State, issued a letter on behalf of the U.S. Government urging OSIPTEL "to accelerate the introduction of lower rates and shorten the proposed transition period in order to bring the benefits of lower, more reasonable mobile termination rates to consumers more quickly and reduce distortions in the Peruvian economy." [9]

Service providers are also keenly aware of the distortions to competition that derive from excessively lengthy glide paths, particularly their exclusionary effects on providers with a smaller subscriber base. This is highlighted by the conflicting positions adopted by Telefónica Móviles' subsidiaries in Peru and Colombia on this issue. In Peru, where Telefónica Móviles, S.A. is the dominant market player, it has vehemently defended the excessively lengthy glide path adopted by OSIPTEL as a necessary measure to foster investment and increased penetration in the Peruvian market.[10] This position, consistent with the interests of a dominant market player, however, is not shared by Telefónica Móviles Colombia, S.A., which in September 2007 held a 24% share of mobile subscribers in Colombia.[11] In fact, Telefónica Móviles Colombia, S.A. recently challenged a three year glide path for the reduction of access charges proposed by the Colombian regulator, Comisión de Regulación de Telecomunicaciones (CRT), as excessively lengthy and "a risk to the competitive dynamic of the sector."[12] At least partly based on this

[8] OFCOM, Mobile call termination: Statement (March 27, 2007), ¶ 9.176.

[9] Letter of Ambassador David Gross, United States Coordinator for International Communications and Information Policy, U.S. Department of State, to Mr. Edwin San Roman, President of OSIPTEL, August 29, 2005.

[10] See Telefónica Móviles, S.A. Communication TM-925-AR-048-07 (March 27, 2007), § 5 b). ("A drastic reduction of revenue obtained by the firm as a product of the elimination of the glide path in the establishment of the cap interconnection rate may force the firm to increase other sources of revenues, reduce costs or investments, possibly interfering with the accelerated development experienced by the mobile market in the past years." "Una reducción drástica en los ingresos que obtiene la empresa producto de la eliminación de la gradualidad en la fijación del cargo de interconexión tope, puede originar que la empresa se encuentre obligada a incrementar otro tipo de ingresos, reducir costos o reducir inversiones, lo cual puede interferir en el desarrollo acelerado que ha tenido el mercado móvil en los últimos años.")

[11] (Ministry of Communications of Colombia, Mobile Market Report, 3Q 2007, available at http://www.mincomunicaciones.gov.co/mincom/src/user_docs/Archivos/Documentos /InformeTMC2007.pdf).

[12] See Telefónica Móviles, S.A., Comments to the "Proposal for regulation establishing access charges for fixed and mobile networks in Colombia" (Oct. 16, 2007), p. 4, available at http://www.crt.gov.co/Documentos/ ActividadRegulatoria/CA/ComentariosPR-2/MOVISTAR.pdf ("Additionally, with such a lengthy transition to reach the target rate (three years), the competitive dynamic of the sector is put at risk" "Adicionalmente, con una

objection, the CRT ultimately discarded the lengthy glide path initially proposed, and adopted an immediate 41% reduction of existing rates.[13]

USTR has expressed concerns about lengthy glide paths, and in its 2007 Section 1377 Report voiced "disappointment" over the timeframe of a glide path proposed (but ultimately discarded) by the Mexican regulator, Comisión Federal de Telecomunicaciones ("COFETEL"), to reduce mobile termination rates and resolve a set of interconnection disputes in Mexico.[14]

In the case of Peru, not only has an equally lengthy glide path as the one proposed by Mexico been in place since 2006, but the gap between the initial rates and the target rates is much larger than in the case of Mexico cited by USTR as non-compliant with WTO and North American Free Agreement ("NAFTA") trade commitments. This has allowed "major suppliers" to continue charging mobile termination rates that are significantly above-cost, to the detriment of smaller providers such as Nextel Peru. An immediate reduction of the glide path is thus imperative to advance the application of the target rates – based on 2004 costs – and avoid the further market distortions derived from the ability of "major suppliers'" to charge above-cost mobile termination rates.

Moreover, even if the target rates for 2009 were applied immediately, mobile termination rates would not reflect real costs, but outdated 2004 costs. Impressive growth in mobile penetration in Peru since 2004[15] has lead to a correlative increase in mobile traffic, consequently reducing average per minute costs.[16] Furthermore, average per minute costs have decreased 18.2% from 2004 through 2006 (Figure 2) according to the operation costs published by operators and minutes of traffic published by OSIPTEL. Accordingly, the lengthy glide path adopted by OSIPTEL further increases the gap between mobile termination rates and their real costs.

---

transición tan larga para alcanzar el cargo objetivo (tres años), se pone en riesgo la dinámica competitiva del sector.").

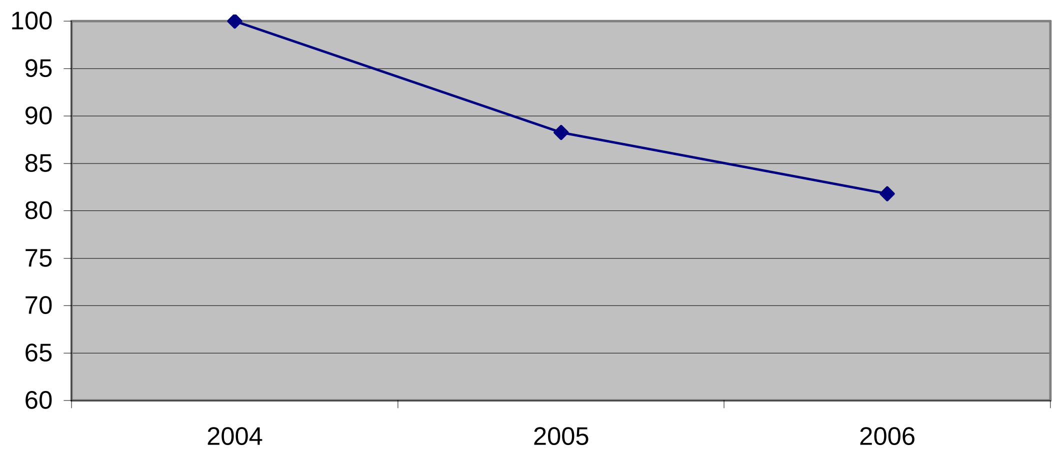
[13] See CRT, Respuesta a Comentarios del Sector a la Propuesta Regulatoria sobre Cargos de Acceso (Dec. 2007), p. 59, available at http://www.crt.gov.co/Documentos/ActividadRegulatoria/CA/RespuestaComentarios_Dic2007.pdf

[14] Regarding the proposed reduction of mobile termination rates in Mexico, USTR expressed "disappointment (…) that COFETEL chose not to implement a quicker glide path towards it target rate." USTR, *Results of the 2007 Section 1377 Review of Telecommunications Trade Agreements*, at 4. Specifically, COFETEL had proposed a three year gradual reduction of rates to reach a cost-based target in 2010. See COFETEL, Press Release No. 9/2006.

[15] OSIPTEL data shows that mobile penetration was at 14.74% by year end 2004, and increased more than threefold to 48.96% by September 2007. *See* OSIPTEL, *Statistical Telecommunications Information, Mobile Service Indicators*, available at http://www.osiptel.gob.pe/Index.ASP?T=T&IDBase=2635&P=%2FOsiptelDocs%2FGPR%2FEL%5FSECTOR%2FINFORMACION+ESTADISTICA%2FIndicadores%5FservicioMovil%2Ehtm#.

[16] OSIPTEL has recognized these variables as directly impacting mobile termination costs. ("One of the most important aspects that influence the costs of mobile networks is the number of users and the traffic they generate at the peak load times" "Uno de los aspectos más importantes que influyen en los costos de las redes de servicios móviles, es la cantidad de usuarios y el tráfico que estos generan en la hora de mayor carga.") See OSIPTEL, Report Nº 093-GPR/2005 (Nov. 17, 2005), p. 19.

Figure 2: Average per minute cost of mobile traffic in Peru (2004=100)



Source: Telecommunications Management Group, Inc.
Note: Average per minute cost of mobile traffic is obtained by dividing operating costs (including depreciation and amortization) by the total minutes of traffic. The data refers to Telefónica Móviles, Nextel and TIM for 2004 and for Telefónica Móviles, Nextel and América Móvil for 2005 and 2006.

Maintaining above-cost termination rates is contrary to Peru's WTO Reference Paper § 2.2 commitment to ensure that "major suppliers" provide interconnection on terms, conditions, and cost-oriented rates that are non-discriminatory. Moreover, it also contradicts Peru's newly acquired trade commitments under the U.S.-Peru TPA to guarantee interconnection at "reasonable rates."[17] Because of this, we urge USTR to work with OSIPTEL and the Peruvian Government to eliminate the glide path and implement cost-based rates.

1.2 Lack of a complete Board of Directors in OSIPTEL

Only two of the five seats on OSIPTEL's Board of Directors are currently occupied. Three of the members of OSIPTEL's Board of Directors resigned on May 28, 2007 in protest of specific reforms in the governance structure of the regulator.[18] Since one of the five seats was vacant at the time, this wave of resignations, which became effective sixty days after they were presented, left the Board with only one appointed member, its President.

[17] U.S.-Peru TPA, Article 14.3.1(a).

[18] Supreme Decree 046-2007-PCM (May 26, 2007), stripped the Board of Directors of authority to appoint the General Manager of the regulator and granted such power exclusively to its President. Resigning board members indicated that this reform altered the principle of collective decision-making, affected the checks and balances between the powers of the Board of Directors and the President of OSIPTEL, and weakened the effects of appointment mechanism for Board Members. See resignation letters from former board members José I. Távara Martín, Raul Pérez-Reyes Espejo and Carlos A. Fuentes Cruz, available at http://www.osiptel.gob.pe/Index.ASP?T=T&IDBase=3000&P=%2FOsiptelDocs%2Fgcc%2Fcomunicaciones%5Finstitucionales%2Fotrins2007%2Ehtm

To date, only one of the four vacancies has been filled. As a result, the Board has lacked the required quorum to validly deliberate for the last five months. This situation has forced the President of OSIPTEL to continue to do business by assuming the powers of the Board of Directors. The President has relied on a specific provision of OSIPTEL's internal regulation that allows him to issue "emergency" decisions on matters subject to Board approval, in cases where it is not possible to validly convene the Board, provided the Board of Directors is subsequently informed of such decision in its first meeting.[19]

This situation has severely undermined the regulator's actions, leaving them vulnerable to potential challenges regarding the validity of decisions made during this vacancy period.[20] Moreover, as will be further discussed in section 1.3 below, the fact that OSIPTEL has ceased exercising its authority in an ordinary manner has directly affected NII Holdings' interests as its petition to review existing mobile termination rates has not been answered since it was submitted in May of 2007.

Such lack of predictability is contrary to Peru's WTO Reference Paper commitment to establish a well-functioning independent regulator[21] as well as its U.S.-Peru TPA commitment to establish a regulatory body to resolve telecommunication disputes.[22] We therefore urge USTR to evaluate the ramifications of the prolonged vacancies in the Board of Directors of OSIPTEL in its certification process pursuant to the U.S.-Peru TPA, and to encourage the Peruvian Government to expeditiously remedy the aforementioned situation.

1.3 Lack of timely resolution of pending petitions regarding above-cost termination rates

During 2007, NII Holdings pursued, albeit with no avail, the legal avenues available under Peruvian law to seek a reduction of existing above-cost mobile termination rates. Despite its best efforts, NII Holdings has been unable to obtain any response from the regulator.

On May 16, 2007 NII Holdings filed a petition requesting OSIPTEL to remove the glide path established in Resolution No. 70 and to immediately adopt the 2009 target rates as a measure to bring mobile termination rates in Peru closer to costs. Pursuant to this petition, on May 17, 2007

---

[19] Supreme Decree 008-2001-PCM, Article 86(j). ("Corresponde al Presidente del OSIPTEL: En el caso que no sea posible reunir al Consejo Directivo para sesionar válidamente, adoptar medidas de emergencia sobre asuntos que corresponda conocer al Consejo Directivo, dando a conocer de la adopción de dichas medidas en la sesión más próxima del Consejo Directivo.")

[20] For example, Telefonica del Peru has challenged the validity of "emergency" decisions issued by the President of OSIPTEL on a matter that is within the authority of the Board of Directors. See Special Recourse filed by Telefonica del Peru (Sept. 3, 2007), at 4, available at http://www.osiptel.gob.pe/Index.ASP?T=T&IDBase=2733&P=%2FOsiptelDocs%2FGCC%2FEL%5FSECTOR%2FNORMAS%5FOSIPTEL%2F2007%2F%2E%2E%2F%2E%2E%2F%2E%2E%2F%2E%2E%2Fvarios%2Fcargos%5Finterconexion%5Ftope%2Ffiles%2F170165%2Epdf.

[21] WTO Reference Paper, at § 5.

[22] U.S.-Peru TPA, Article 14.12.

NII Holdings was given an opportunity to briefly make a presentation before OSIPTEL's Board of Directors in support of its petition.

Although OSIPTEL is required by law to resolve the matter within 30 days, more than seven months have passed since Nextel Peru filed its petition and the regulator has yet to issue a determination. NII Holdings appreciates that the current limited composition of the Board of Directors of OSIPTEL undoubtedly affects its functioning. Nevertheless, OSIPTEL's failure to respond to the petition filed by NII Holdings, is significantly affecting its interests and allowing "major suppliers" in Peru (Telefónica Móviles S.A. and América Móvil Perú S.A.C.) to continue charging above-cost mobile termination rates. OSIPTEL's lack of timely response undermines Peru's GATS commitments and its newly acquired commitments under the U.S.-Peru TPA which call for the "prompt" review of decisions involving matters covered by these agreements -- such as establishing "reasonable" mobile termination rates.[23]

2. <u>Mexico's breach of telecommunications trade commitments</u>

NII Holdings also has been burdened by Mexico's excessive market entry requirements that are inconsistent with its trade commitments. Mexico's lack of compliance with its trade commitments regarding licensing proceedings is not a novel issue. In 2007, USTR cited Mexico for maintaining unjustifiably lengthy processes (in practice of between one and two years) for granting concessions relating to the use of foreign satellite capacity.[24] In the case of Nextel Mexico, its local service license petitions have been pending before national regulatory authorities ***for over five years***. Similarly, petitions for renewal of a number of Nextel Mexico's digital trunking licenses have also gone unanswered ***for over two years***.

Under the Telecommunications Law of Mexico, request for authorizations and renewals require review by the COFETEL, but are ultimately approved by the Secretaría de Comunicaciones y Transporte ("SCT"). This licensing process is supposed to take 120 days.

On December 19, 2002, Nextel Mexico filed an initial petition before the SCT to obtain local service licenses to provide fixed and mobile wireless access and data transmission services over its digital trunking network. The local service licenses would allow Nextel Mexico to directly interconnect its digital trunking services with existing fixed and mobile telephony providers and

[23] Article VI of the GATS ("Each Member shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services.") U.S.-Peru TPA, Article 19.5.1. ("Each Party shall establish or maintain judicial, quasi-judicial, or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement.")

[24] USTR, *Results of the 2007 Section 1377 Review of Telecommunications Trade Agreements*, at 13-14. ("In Mexico, companies often encounter long delays in obtaining a license" adding that "[a]lthough Mexico's regulations call for granting a license within 120 days, companies routinely wait one to two years before obtaining their concessions" and concluding that "lack of transparent rules and excessive documentary requirements appear to be the real source of such delays.")

compete more effectively in the Mexican market. However, to date the Mexican authorities have not issued a determination on Nextel Mexico's petition.

Instead, Nextel Mexico has been subject to multiple documentary and information requests. In conducting its technical review, COFETEL has on five separate occasions requested additional information and documentation from Nextel Mexico.[25] Nextel Mexico has diligently complied with all such requests, in fact submitting 18 different filings before Mexican authorities to respond to specific requirements and further explain its petitions over a five-year period.

These unjustified delays have prevented Nextel Mexico from seeking and obtaining interconnection of its digital trunking network with fixed and mobile providers in Mexico. As such, Nextel Mexico has been forced to continue reselling traffic from licensed local service providers and has denied Nextel Mexico the opportunity to offer Calling Party Pays ("CPP") mobile service, thus forgoing lucrative business opportunities in a market open to competition. Accordingly, this has significantly hindered Nextel Mexico's ability to compete on equal footing in the Mexican mobile market, amounting to an impermissible restriction in the supply of services.

In addition, Mexican authorities have also failed to respond on a timely manner to a set of license renewal petitions filed by Nextel Mexico. Nextel Mexico has requested renewal of 30 of its digital trunking licenses. These petitions were filed in strict compliance with the renewal conditions set forth in the respective licenses. However, after more than two years from the time the renewal should have been granted, Mexican authorities have yet to issue a decision regarding these renewal requests. These omissions create a great deal of regulatory uncertainty and risk for NII Holdings as the principal investor of Nextel Mexico, and have significant financial repercussions.[26]

The delays in issuing and renewing licenses represent excessive market entry requirements inconsistent with Mexico's commitments under the GATS. Article VI of the GATS (Domestic Regulation) specifically requires Members to ensure that measures of general application affecting trade in services, such as general licensing procedures, are administered in a reasonable, objective, and impartial manner.[27] Furthermore, Members must also ensure that

[25] See COFETEL, Oficio CFT/D06/CGST/DGSLR/1279/2003 (Feb. 25, 2003) requiring inscription in the public commercial registry of certain documents; COFETEL, Oficio N° CFT/D06/CGST/DGSLR/8941/2003 (Sept. 1, 2003) requesting additional corporate information; COFETEL, Oficio N° CFT/D06/CGST/DGSLR/12980/2003 (Dec. 8, 2003) requesting additional information on foreign investment in Nextel Mexico; COFETEL, Oficio N° CFT/D06/CGST/DGSLR.10876/2004 (Oct. 23, 2004) requiring five year traffic study and projected growth estimates; COFETEL, Oficio N°CFT/D01/STP/4957/2007 (June 27, 2007) proposing a specific fee for granting the licenses.

[26] NII Holdings estimates the Mexican government's failure to renew its licenses has lead to excess payments of special concession fees of more than US$ 32 million (354 million Mexican Pesos) until November 2007. This is because Nextel Mexico has been forced to continue paying the fee established in the initial license of 5% of its gross revenue, instead of the lower fee applicable to renewed licenses under Article 244-D of the Federal Fee Law.

measures relating to licensing requirements are not more burdensome than necessary to ensure the quality of service, and are not in themselves a restriction on the supply of a service.[28]

We request USTR to continue to closely monitor Mexico's compliance with market entry requirements as provided under its trade commitments and to work together with COFETEL and SCT to expedite the pending licensing and renewal petitions filed by Nextel Mexico.

* * * *

We thank you for the opportunity to present our comments and would be pleased to provide any further information that would be helpful to USTR.

Respectfully submitted,

//s//

Gary Begeman
Vice President and General Counsel

[27] Article VI of the GATS. ("In sectors where specific service commitments are undertaken, each Member shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner")

[28] Article VI of the GATS. ("With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, the Council for Trade in Services shall, through appropriate bodies it may establish, develop any necessary disciplines. Such disciplines shall aim to ensure that such requirements are, inter alia: (…) (b) not more burdensome than necessary to ensure the quality of the service; (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.")