VIA E-MAIL

January 17, 2005

Gloria Blue
Executive Secretary
Trade Policy Staff Committee
ATTN: Section 1377 Comments
Office of the United States Trade Representative
1624 F Street, NW
Washington, D.C. 20508
FR0502@USTR.EOP.GOV

Re: *Vodafone Section 1377 Reply Comments*

By this filing, Vodafone Americas, Inc., on its own behalf and that of Vodafone Group Plc (collectively 'Vodafone') replies to comments filed in response to the U.S. Trade Representative's ('USTR') request for comment in its 2005 'Section 1377' proceeding.[1]

A number of commenting parties, notably AT&T, ECTA and Comptel/ASCENT, have again submitted comments to the USTR concerning alleged 'excessive' foreign mobile termination rates.[2] At the outset, Vodafone notes that this issue is already the subject of a Notice of Inquiry at the FCC,[3] to which Vodafone has submitted extensive comments, and has been the subject of previous Section 1377 proceedings in which Vodafone has participated.[4] In this limited reply, therefore, we confine ourselves to a number of brief observations.

First, as AT&T notes, foreign correspondent carriers have 'de-averaged' their accounting rates, separating the rates for calls which terminate on foreign mobile networks from those which terminate on foreign fixed networks.[5] This de-averaging of prices ensures that buyers face more accurate price information than they did previously. It also serves to eliminate distortions which otherwise arise from arbitrage activities such as 'tromboning' traffic to exploit differentials between averaged international accounting rates and domestic mobile termination rates in overseas

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1 Office of the United States Trade Representative, *Request for Comments Concerning Compliance with Telecommunications Trade Agreements*, 69 Fed. Reg. 68439 (Nov. 24, 2004).
2 *See* AT&T Comments at 1-3; ECTA Comments at 2; Comptel/Ascent Comments at 2-5.
3 *In the Matter of The Effect of Foreign Mobile Termination Rates On U.S. Customers*, Notice of Inquiry, IB Docket No. 04-398, FCC 04-247 (rel. Oct. 26, 2004) ('FCC NOI').
4 *See* Vodafone Comments in FCC IB Docket No. 04-398, filed Jan. 14, 2005; Vodafone Comments and Reply Comments in FCC IB Docket No. 02-324.
5 *See* AT&T Comments at 2.

markets. De-averaging improves price signals and transparency and, thus, the functioning of market forces. Therefore, de-averaging should not in itself be considered objectionable by the USTR.

The market for international telecommunications may benefit from measures to further improve transparency. For example, such measures might encourage AT&T and other US carriers to buy more effectively in that market than they appear to do today. Vodafone notes that AT&T and other commenters do not make such proposals in this proceeding and instead focus only on one market component affecting U.S. international traffic to foreign mobile markets - the termination rates charged by foreign mobile operators to domestic fixed line operators. Vodafone would see merit, for example, in the development of accounting rate arrangements which would de-average such rates by reference to time of day and in a manner that distinguishes between the termination rates charged by different mobile operators, if these persist.

Vodafone strongly disputes AT&T's assertion that a ratio of 8:1 between mobile and fixed termination charges self-evidently provides evidence of excessive pricing. Regulators such as Ofcom in the UK have imposed rates which imply a ratio of a similar magnitude, after many years of inquiry to determine the relative costs of both fixed and mobile networks – inquiry which AT&T has not undertaken.[6] AT&T's attempt to introduce 'proxies' using its revised TCP methodology is, as Vodafone shows in its comments to the FCC NOI, both wholly misplaced and simplistic and no substitute for a proper investigation of the costs involved.[7]

Comptel's suggestion that mobile termination rates should be reduced in line with fixed termination rates (implying a 1:1 ratio) 'in order to avoid violating trade agreements' is wholly without foundation and does not appear to be supported by other commenters.

ECTA's submission refers only to France and Germany, and in fact provides further evidence of actions by these and other European regulators – evidence demonstrating that concerns about mobile termination rates cannot be sustained in the Section 1377 context. ECTA's comments concerning France request that the USTR do no more than ensure that mobile termination rate reductions in France apply equally to calls which originate internationally – an outcome Vodafone does not dispute. Regarding Germany, ECTA neglects to note that mobile termination rates there are set to fall by 10% in January 2005 and in subsequent years and that the German regulator is currently undertaking its review of the mobile termination market under the new EU Framework. Indeed, no commenter this year can cite any European market in which there is no regulatory action under way concerning mobile termination rates. The same is true of

[6] Indeed, US carriers have generally touted the UK's efforts in this regard. *See* WorldCom Comments in FCC IB Docket No. 02-324, at 17-18; AT&T Reply Comments in FCC IB Docket No. 02-324 at 22-25; AT&T 2004 Section 1377 Comments at 3.
[7] Vodafone FCC NOI Comments at 25-29.

Australia and New Zealand. In the absence of any alleged deficiency on the part of foreign regulators, there can be no case for the USTR to consider further action.

A number of respondents refer to allegations of price squeezing on the part of mobile operators who sell 'on net' mobile services at a price below mobile termination rates. This is a practice pursued by many of the respondents themselves in the provision of fixed line virtual private network ('VPN') services on both a national and international basis. It would also appear to be a common feature of the US mobile market. Vodafone submits that such practices cannot properly be considered to be anti-competitive and notes that European antitrust authorities have come to similar conclusions after extensive inquiries.[8] There can no role for the USTR in such matters.[9]

Please contact the undersigned if there are questions concerning this filing or if you need additional information.

Respectfully submitted,

/s/____________________

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[8] *See, e.g.*, http://www.ofcom.org.uk/bulletins/comp_bull_index/comp_bull_ccases/closed all/cw_615/?a=87101. The case cited by ECTA in relation to practices by French operators involves slightly different concerns because the French operators concerned were integrated fixed/mobile carriers. This case is under appeal.
[9] *See also* Vodafone FCC NOI Comments at 30.