United States Trade Representative

International mobile termination rates

an **INTUG** submission
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introduction For several years the comments received by the United States Trade Representative (USTR) in preparation for the annual *1337* report on international trade issues in telecommunications have highlighted the problem of the high cost of termination of calls on mobile networks in countries using the Calling Party Pays (CPP) system. These charges are a significant burden on individuals and on corporate callers in the USA. At a time when prices for long distance and international calls are falling, often to become flat-rate plans, the rates for termination on foreign mobile networks have grown ever more conspicuous and burdensome.

INTUG has raised the issue of excessive fixed-to-mobile rates with the International Telecommunication Union (ITU), Organisation for Economic Cooperation and Development (OECD), CITEL, APEC TEL, the European Commission (EC) and the European Regulators Group (ERG).

INTUG has recently filed comments with the FCC in response to its notice of inquiry.

A large and growing number of countries have mandated CPP and have allowed operators to determine the price of termination on their networks at levels unrelated to the costs and with every incentive to charge high prices. In doing so they have ignored their WTO obligations.

Mobile network operators in those countries have used every conceivable means to deny and to delay the reductions of these charges, because of the enormous amounts of money at stake. They have made extensive filings with regulators, often using experts from the USA, and have taken almost every decision to at least one level of appeal. The operators have exerted considerable political influence to discourage regulation or to divert the limited resources of regulators to other areas, where the resistance would be weaker. In many cases the political influence is accentuated by the government being the owner of a substantial holding of stock in one of the mobile network operators.

The nature of these delays are, to a significant extent, political and thus require countervailing political pressure in order to encourage action by governments and by regulators.

INTUG believes that it is time for the USTR to increase the pressure on foreign governments to address this issue and to do so expeditiously.

Europe, Latin America & Japan

The comments filed by operators in the first round identify the "usual suspects", countries that have been the subject of complaints for several years but where no effective action has been taken by the governments.

Softbank has criticised the prices of mobile termination in Japan. We would agree that the Ministry of Internal affairs and Communications (MIC) has been remarkably slow in reducing termination rates, apparently in order to support NTT, KDDI and Vodafone KK.

NII Holdings has criticised termination rates in Peru and more generally in Latin America, while Cinco Telecom has criticised the rates in Colombia. We agree that many of the mobile termination rates in Latin America are very high and their reduction has not been adequately addressed or even ignored. Any increases in such rates are clearly unjustified and incompatible with WTO obligations.

ECTA criticises termination rates in Europe in general and especially those in France and Germany. Our experience is that the performance across Europe varies greatly both in the rates charged and in the level of activity of the regulators in pursuing this matter. The European Union has both competition law (Articles 81 and 82 and the EC Treaty) and its "new" regulatory framework that came into effect on 25 July 2003, plus the annual implementation reports by the European Commission. Nonetheless, there has clearly been a systematic reluctance among some EU member states to resolve the issue of mobile termination rates.

AT&T expresses concern over the termination rates across a wide swathe of countries: Belgium, Bulgaria, Denmark, Estonia, Finland, Germany, Greece, Hungary, Iceland, Italy, the Netherlands, New Zealand, Peru, Portugal, Romania and Switzerland. We agree with AT&T in its view that there is no competitive pressure to reduce termination rates because of the absence of an effective demand-side substitute for the calling party or the called party. The potential substitutes involve lower quality or greater inconvenience, for example, placing a call to a fixed line. A particular problem when calling from North America to Europe and to Asia is the time difference which complicates the question of the fixed line number that someone should call. Another alternative, the Short Message Service (SMS), is also priced far in excess of cost orientation. The respective governments have been less than enthusiastic in addressing the problem and have failed to comply with their WTO commitments.

applicability Signatories to the General Agreement on Trade in Services (GATS), the Telecommunications Annex and the Reference Paper are bound by key provisions on the termination of calls on mobile networks. The commitments include the cost-oriented interconnection with all mobile network operators.

The definitions provided in the Reference Paper are:

> **Essential facilities** mean 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.
>
> A **major supplier** is a supplier 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.

Mobile telecommunications are provided either by one or by a very small number of operators. The services they provided cannot be substituted at all, since spectrum is not available and the operator maintain a monopoly on termination. Therefore, mobile cellular networks are essential facilities within the terms of the Reference Paper.

The Reference Paper further requires that:

> 2.2 Interconnection to be ensured
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> Interconnection with a major supplier will be ensured at any technically feasible point in the network. Such interconnection is provided.
>
> (a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates and of a quality no less favourable than that provided for its own like services or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates;
> (b) in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and
> (c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

Thus, WTO signatories are obliged to ensure that interconnection to all mobile networks complies with their commitments, including cost oriented interconnection. Most mobile network operators terminate their own calls on their networks at very low prices, terms that are not available to other operators. Thus they discriminate against the other operators, both domestic and foreign.

conclusions

The lack of progress by a wide range of countries is deeply disappointing. The increase in the number of countries that have introduced separate termination rates for mobile networks outweighs by a significant margin the savings made on those countries that have moderated the rates of their operators.

Operators have seen that high termination rates are an easy way to make money, while their governments have realised that no penalty will be imposed for laxity in their WTO commitments.

There can be no doubt of the applicability of the obligation for cost-oriented interconnection at any technically feasible point on the networks of mobile network operators. However, it is systematically ignored or implemented by governments in a manner that is painfully slow.

It is now time that the matter be brought to a head and that the issue be taken to the WTO. Given that a case before a WTO Trades Dispute Body would take some time, it is essential to act now, in 2005, rather than to endure a further wait. If no complaint is made, then it will be taken by the mobile network operators that one will never be made and the interconnection provision will effectively lapse.

The USTR should coordinate its work with that of the FCC on its Notice of Inquiry (IB 04-398). The FCC can support regulators in key countries to address more effectively this problem, while the USTR can press governments to implement their commitments.

INTUG

INTUG, the International Telecommunications Users Group (INTUG), is an association of national telecommunications users associations. INTUG was founded in 1974 to act as a single voice for users of telecommunications.

The mission of INTUG is to ensure that users have access to affordable, interoperable telecommunications services and that their voice is heard wherever telecommunications policy is decided. For almost thirty years INTUG has argued for the introduction of competition in telecommunications and that all users must have access to the benefits of such competition.
