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VIA ELECTRONIC MAIL AND HAND DELIVERY

Ms. Rhonda Schnare
Office of General Counsel
ATTN: Section 1377 Comments
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, DC 20508

Dear Ms. Schnare:

El Instituto Dominican de Telecomunicaciones ("INDOTEL") wishes to reply to the January 3, 2003 comments submitted by AT&T in your annual review of telecommunications trade agreements under Section 1377.[1]

USTR's review examines whether trading partners of the United States have violated their commitments under telecommunications trade agreements, including the telecommunications commitments agreed to under the World Trade Organization's ("WTO") General Agreement on Trade in Services ("GATS").

The Dominican Republic (or "DR") views partnership with the United States as a priority and the takes its WTO obligations very seriously. INDOTEL is therefore grateful for the opportunity to respond to the comments submitted by AT&T. Because of the importance of the relationship between the Dominican Republic and the U.S., INDOTEL greatly appreciates the services of the U.S. carriers providing international telephony to the Dominican Republic, and welcomes the opportunity to explain to them in detail the reasons for INDOTEL's recent actions. INDOTEL has met with AT&T on this issue several times, and has responded to AT&T and other U.S. inquiries with letters and meetings. At the meeting with AT&T, INDOTEL invited AT&T to invest directly in the Dominican Republic, to benefit from its competitive market. INDOTEL nonetheless believes it useful to reiterate its rationale for the recent rate increase in this letter.

The Dominican Republic is engaged in a broad range of international cooperation matters with the United States, including on law-enforcement, extradition, drug interdiction, anti-corruption, illegal migration, anti-money laundering, and counter-terrorism. Because of the broad range of areas of cooperation, when INDOTEL received a letter signed by senior officials from 4 U.S. agencies last Fall raising

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[1] AT&T Comments (filed Jan. 3, 2003) *available at* http://www.ustr.gov/sectors/industry/Telecom1377/2003/atandt.pdf (last visited Jan. 23, 2003).

possible WTO concerns regarding the increase that at the time was scheduled to go into effect October 1, 2002 and requesting INDOTEL consider those agencies' views, INDOTEL did in fact consider the U.S. views and postponed the effective date of the increase until 2003.

In the letter, the U.S. officials stated that they shared the objectives of INDOTEL for telecommunications development and competition.[2] INDOTEL, as the regulator from a sovereign nation, expects the U.S. government to respect its right to regulate for such development and competition as it sees necessary, in the context of a developing country that has economic, democratic and political challenges very different from those of the U.S. Likewise, INDOTEL respects the sovereignty of USTR and other agencies that participate in the annual telecom trade review to act according to U.S. law and to therefore take into account views from the private sector.

As the former U.S. Assistant Secretary for State for Western Hemisphere Affairs Otto Reich recently testified: "The U.S. has a strong interest in a democratic, stable and economically healthy Dominican Republic."[3] Moreover, according to Ambassador Reich, now Special Envoy for Western Hemisphere Initiatives, "[t]he United States strongly supports the Dominican Republic's successful efforts to strengthen its democracy."[4] He added that "[t]he Dominican Republic is four-square behind the U.S. counter-terrorism agenda and can be expected to be supportive in international fora."[5]

The increased termination rate was a decision recommended by President Hipolito Majia's Council for Economic Policy to correct the Dominican foreign currency account, in order to provide a more stable and healthy economy for the Dominican Republic. As the United States has recognized, a more stable economic environment in our country makes the Dominican Republic a more dependable partner for the United States in its counter-terrorism programs.

With respect to the question of whether the Dominican Republic has violated its WTO obligations, as a threshold matter, as noted in its published Resolution

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2 See Letter to President Orlando Jorge Mera, INDOTEL, from Ambassador David Gross, Under Secretary for International Trade Grant Aldonas, Assistant Secretary for Communications and Information Nancy Victory, and Assistant U.S. Trade Representative for the Americas Regina Vargo (Sept. 20, 2002).

3 *Threats to Democratic Stability in the Dominican Republic and Guatemala*, Testimony to the House International Relations Committee, Subcommittee on the Western Hemisphere (Oct. 10, 2002), *available at* http://www.state.gov/p/wha/rls/rm/14327pf.htm (last visited Jan. 23, 2003).

4 *Id.*

5 *Id.*

Number 084-02, the Dominican Republic did not bind cross-border telecommunications in its GATS schedule of commitments. Therefore, AT&T's comment that INDOTEL contravened WTO obligations relating to such a mode of entry is inaccurate. Nonetheless, INDOTEL's actions have been non-discriminatory, transparent, competitively-neutral and cost-oriented.

More specifically, AT&T mischaracterizes INDOTEL's actions by stating that INDOTEL mandated a 50 percent increase in the fixed rates for all in-bound traffic terminating in the Dominican Republic. There was no such mandate. The Resolution requires that the termination be $.08, not a mandated increase of 50 percent. The $.08 was selected because it was an amount sufficient to rebalance the rate and to restore the foreign account to stability.

More significantly, AT&T claims that the increase is discriminatory, because there is no similar increase for outbound traffic from the Dominican Republic. Presumably AT&T is aware that the U.S.-DR route has long been approved for International Simple Resale ("ISR") by the U.S. Federal Communications Commission ("FCC"). Under the FCC's ISR policy, carriers are not required to evenly divide an approved accounting rate, but may agree to asymmetric rates. Rates on the U.S.-DR route have been asymmetric since 2000, with U.S. carriers paying a higher rate to terminate traffic in the Dominican Republic than Dominican carriers pay to terminate traffic into the United States. U.S. carriers have not previously claimed in USTR's annual review that an asymmetric ISR rate is discriminatory under the WTO on the U.S.-DR route, or any other route.

The Dominican Republic, as noted by the FCC, is a medium-low income country. The country has a teledensity of 11 percent, meaning 11 percent of Dominican homes have wireline telephone service. The United States has a teledensity of 94 percent, or almost nine times that of the Dominican Republic. Teledensity is an approximate of the inverse of the average cost of service. The higher the teledensity, the greater are the economies of scale in the use of the network and the lower the cost of per minute use. It is eminently reasonable that the Dominican carriers have higher termination costs than their U.S. counterparts. And yet, whereas the U.S. teledensity is 8.5 times that of the Dominican Republic, its increased rate is only 4 times that of the United States.

AT&T's discrimination analysis is flawed in another way. GATS non-discrimination obligations require one WTO Member to treat providers from all other WTO Members alike for *like* services. All international carriers from all other WTO Members are required to pay the $.08 rate - INDOTEL has not permitted discrimination favoring some carriers from some countries with a lower rate. The other non-discrimination obligation is national treatment, which would require

INDOTEL to apply the same treatment it applies to DR-owned carriers to similarly situated foreign-owned carriers for like services. INDOTEL has required that the $.08 rate apply to all international carriers terminating into the DR, including those DR-owned caters such as CR2 or JDT Corp. Likewise, it has required all Dominican carriers to charge the $.08 rate, including those like Codetel wish significant U.S. ownership.

Moreover, WTO competition principles are meant to protect competition for competitors in the same market. AT&T does not compete in the Dominican Republic's local or long-distance markets, although the foreign investment rules permit such entry and other U.S. carriers have invested in that open market. With respect to the market in which AT&T operates that is at issue, the U.S.-DR route, all U.S. international carriers are subject to the same rate, so there is no anti-competitive, discriminatory effect with respect to AT&T.

The Dominican teledensity rate of 11 percent is below the regional Caribbean and Latin American average of 13 percent, and yet, even with the increase to $.08, it will have among the lowest termination rates in the region - lower than richer countries in the region, with higher teledensity. Nonetheless, AT&T complains that INDOTEL has not justified that this increase is required by any increase in cost of termination.

As INDOTEL stated in Resolution 084-02[6], it was presented and reviewed studies that its carriers' termination rates, due to the market structure of one U.S. carrier having almost 50 percent of the U.S. route and having four Dominican carriers with which to negotiate for termination of its traffic, had actually fallen below cost and below sustainable levels. Thus, termination rates actually required rebalancing. Moreover, as published in Resolution 084-02, INDOTEL noted that the levels of foreign currency had fallen dramatically in recent years, and that the President's Council for Economic Policy, which includes the Central Bank, concluded that fiscal measures must be taken to restore the balance of payments.

The WTO Reference Paper requires Members, where specific commitments are undertaken, to ensure that interconnection is provided at cost-oriented rates, "having regard to *economic feasibility.*" While the interconnection provisions of the Reference Paper do not apply to the Dominican Republic's increased termination rate, under its schedule of commitments, INDOTEL's increase nonetheless is consistent with such principles, since the Dominican Council for Economic Policy determined that an increase was necessary to meet the country's economic needs.

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[6] Instituto Dominico de Telecomunicaciones (INDOTEL), *Termination Rates for International Services*, Resolution No. 084-02 (Sept. 30, 2002).

Thus, $.08 is economically feasible, and the previous rates are not, at this time in Dominican economic development.

Despite these published demonstrations of the need to raise the termination rate, AT&T argues that INDOTEL's actions contravene its WTO obligations. INDOTEL does not believe that many WTO Members would agree that the Dominican Republic may not take fiscal measures necessary to protect its economy, unless AT&T is satisfied that such actions are required by any increased costs." Indeed, in the preamble to the GATS, Members recognized the sovereign right of their trading partners "to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet national policy objectives and, given asymmetries existing with respect to the degree of development of services regulations in different carries, the particular need of developing countries to exercise this right."[7]

Moreover, the Group on Basic Telecommunications issued a Report at the close of the GATS telecom negotiations that stated the Members' understating that the application of differential accounting rates to services and service suppliers of other Members "would not give rise to action by Members under dispute settlement under the WTO."[8] This should be even more the case for the Dominican Republic, given that the Reference Paper's obligations on interconnection only apply where specific commitments are made, and the Dominican Republic did not make specific commitments for cross-border telecommunications.

Yet, AT&T complains that INDOTEL has not shown that the increased rate is required by any increased costs for termination. If AT&T's own strict standard applied to its pricing practices on the U.S.-DR route, its rates could be subject to criticism as being not cost-based. From 1995-2000, AT&T's off-peak residential rate for calls to the Dominican Republic dropped 23.8 percent, from 80 cents to 61 cents. However, during the same period, the Dominican carriers' termination rate was reduced 77 percent. If AT&T complied with its own standard of cost-based rates, its off-peak residential rates for the Dominican Republic would have been reduced 77 percent as well. However, it chose not to pass these savings on to its consumers on the DR route. For peak service to the Dominican Republic, AT&T consumer rates have actually increased, even while the termination rate into the Dominican Republic was dropping so substantially. For every 1 percent of

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7 *Uruguay Round Trade Agreements, Texts of Agreements, Implementing Bill, Statement of Administrative Action, and Required Supporting Documents*, H.R. Doc. No. 103-316, Vol. I at 1588 (preamble to General Agreement on Trade in Services).

8 Report of the Group on Basic Telecommunications, WTO Doc.S/GBT/14 (Feb. 15, 1997).

reduction of the DR termination rate, AT&T's peak residential rate actually increased by 0.46 percent.

Given the lack of savings pass-through to AT&T's U.S. consumers on the DR route, it is not evident to INDOTEL that AT&T will have to raise rates for U.S. consumers calling the Dominican Republic. However, if it is necessary, the bulk of consumers calling on the DR route are Dominicans living in the U.S., where income on average is 6 times that in the DR. As for business services to the DR, current AT&T rates are the second lowest in the region. So businesses interacting with Caribbean countries such as the tourism industry are already paying much higher rates for business services to neighbors of the Dominican Republic.

AT&T infers that INDOTEL's action, to the extent motivated by correcting the balance of payments, was unjustifiably done to protect the telecommunications sector, contrary to Article XII's provision that balance of payment restrictions "shall not be adopted or maintained for the purpose of protecting a particular service sector."[9] Since Article XII's limitations apply to measures relating to a Member's specific commitments, and the Dominican Republic did not bind cross-border telecommunications, the Article does not generally apply. Nonetheless, INDOTEL's actions were consistent with the principles of the article. The preceding sentence to that which AT&T quotes provides: "Members may give priority to the supply of services which are more essential to their economic or development programmers."[10] Since international telecommunications is a critical source of foreign currency for the Dominican Republic, and improving its foreign current account is intended for economic development, its actions are consistent with Article XII principles.

Moreover, INDOTEL's increased termination was not adopted in order to protect telecommunications, but in large measure to increase the amounts of foreign currency in the national account. The word "protect" in the WTO context has traditionally meant to shield from competition. The Dominican Republic has a very competitive market, with five national concessionaires, including those with U.S. ownership. Resolution 084-02 will not reduce competition, since each of the similarly-situated competitors will be subject to the increased rate.

AT&T also alleges that the increase contravened the Dominican Republic's obligations of non-discriminatory and competitively-neutral universal service programs under Section 3 of the Reference Paper.[11] INDOTEL disagrees that the

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9 AT&T Comments at 4 *quoting* GATS Article XII, 3.

10 GATS Article XII, 3.

11 See GATS Reference Paper at para 3.

increased rate is an element of its universal service program, under the intended meaning of the Reference Paper. To accept AT&T's argument would imply that the revenues U.S. carriers receive from their foreign counterparts for termination services are a part of the U.S. universal service fund. Such an interpretation is obviously misguided, and would violate the provisions of the U.S. Telecommunications Act addressing universal service.[12] Government pronouncements on the infrastructure-deployment benefits of an increased rate does not transform that increase into a universal service program.

Finally, AT&T infers that the Dominican Republic violated its WTO obligations on transparency. GATS obligations generally require publication of measures impacting trade in services.[13] INDOTEL went far beyond its transparency obligations by providing notice of the increase, and an opportunity for comment.

In closing, the United States and the Dominican Republic share an interest in high-quality telecommunications infrastructure, both for their respective consumers, and as a vehicle for achieving their mutual goals on a number of international cooperation programs. If the termination rate is not rebalanced, and the Dominican Republic's foreign account not strengthened, telecommunications services for U.S. consumers and government users could deteriorate. For the all of the above reasons, INDOTEL believes AT&T's comments are misplaced. INDOTEL is happy to discuss these issues with the U.S. government again, and looks forward to continuing their cooperative relationship.

Sincerely,

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12 See §251, Telecommunications Act of 1996, 47 U.S.C. §251 (1996).

13 See GATS, Article III, 1.

cc *: Assistant Secretary of State for Western Hemisphere Affairs Otto J. Reich
Assistant Secretary of the Treasury for International Affairs Randal K. Quarles
Assistant Attorney General For International Affairs Ralph F. Boyd, Jr.
FCC Chairman Michael Powell
Assistant Secretary for Commerce for Communications and Information Nancy Victory
Deputy Assistant Secretary of State for Communications and Information David Gross

* - by hand delivery