VIA E-MAIL

January 23, 2004

Gloria Blue
Executive Secretary
Trade Policy Staff Committee
ATTN: Section 1377 Comments
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

Re: *Vodafone Americas, Inc. Section 1377 Reply Comments*
Australia, France, Germany, Greece, Ireland, Italy, Japan, Netherlands, Spain, Sweden, United Kingdom

Pursuant to Section 1377 of the Omnibus Trade and Competitiveness Act of 1988, Vodafone Americas, Inc., on behalf of itself and Vodafone Group Services, Ltd ("Vodafone"),[1] respectfully submits this reply to address the comments of AT&T Corp. ("AT&T") and the CompTel/ASCENT alliance ("CompTel/ASCENT").[2] Vodafone herein addresses both parties' comments by reference to the treatment of mobile termination rates ("MTRs") in those markets in which it operates.

AT&T and CompTel/ASCENT seek to imply that the issue of MTRs in overseas markets is substantively new to foreign national regulatory authorities ("NRAs") and/or becoming increasingly problematic. Both parties acknowledge, however, that NRAs are already well apprised of this matter. The facts, at least in those markets in which Vodafone operates, are that MTRs have been regulated either implicitly or explicitly for some years. Further, despite AT&T and ASCENT/CompTel's accusations that prices are "excessive" or "abusive," Vodafone notes that

[1] Vodafone is the world's largest mobile operator, with equity interests in 26 countries and Partner Networks in a further 11 countries, serving over 125 million proportionate customers. In the United States, Vodafone has a 45% interest in Verizon Wireless.

[2] AT&T is concerned with "foreign mobile termination rates," *i.e.*, payments made by US carriers for calls which originate in the United States and terminate on foreign mobile networks, while CompTel/ASCENT appears concerned with mobile termination rates of domestic calls in overseas markets. Both parties raise substantially the same issues, however, and there is generally no difference between the charges levied by foreign mobile operators for calls which originate domestically and those which originate overseas (for example, in the United States).

neither AT&T nor CompTel/ASCENT have, so far as it is aware, sought redress under competition law in the markets concerned (a remedy which would clearly be available if such claims were well founded).

In fact, MTRs have been falling rapidly – by at least 10% per year in most instances – in the European markets identified by AT&T and CompTel/ASCENT. This reflects that mobile operators are obliged to levy "cost orientated" charges under EU legislation and that NRAs have intervened where appropriate. AT&T's unsubstantiated assertion that "many" MTRs "continue to increase to even higher levels"[3] is simply contrary to the evidence available to Vodafone.

As mentioned above, many foreign regulators have already reduced MTRs and are engaged in proceedings which are expected to lower MTRs further. In EU Member States, regulators are obliged to review MTRs as part of the implementation process for the new EU Communications Regulatory Framework.[4] This Framework is generally recognized as *extending* the regulation of mobile termination rates to all mobile operators in a given market, rather than the leading operators, as in the past. (Indeed, Vodafone supports such a "symmetric" approach to price setting.) These regulatory proceedings are complex and necessarily will take some time to complete – USTR need only look at the Federal Communications Commission's own efforts, particularly in the area of intercarrier compensation, to understand that the duration and complexity of these proceedings is not unique to foreign regulators. USTR should not prejudge the outcome of these proceedings.

AT&T and CompTel/ASCENT attempt to strengthen their arguments by comparing MTRs with rates to terminate traffic on a fixed network or by reference to "LRIC benchmarks" derived from unpublished US sources. Neither comparison withstands serious scrutiny. All regulators who have seriously considered mobile termination have consistently recognized that mobile networks have substantially different fundamental economics and functionality when compared to fixed networks. Insofar as Vodafone is aware, *none* has concluded that fixed and mobile rates should be the same. Further, few if any authorities in the world believe that ignoring the fixed costs of a network, as implied by a "stand alone LRIC" test, would fulfill the requirements of cost orientation.

CompTel/ASCENT also makes very broad assertions concerning "cross-subsidization" and "price squeeze" effects of MTRs and "predatory" on net calling prices. These too have been the subject of extensive examination by competition authorities, both the Competition Directorate of

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3 AT&T at 1.

4 Moreover, regulators in Europe have indicated to the EC their general understanding that further regulation of MTRs would be appropriate, *See, e.g.*, Independent Regulators Group, *Principles of Implementation and Best practice on the application of remedies in the mobile voice call termination market*, Nov. 20, 2003; European Regulators Group/European Commission, *Draft joint ERG/EC approach on appropriate remedies in the new regulatory framework*, 40-41, 113-120 (Nov. 21, 2003), Public consultation on the draft joint ERG and Commission Services approach to remedies under the new regulatory framework, ERG(03)(43) (Dec. 5, 2003).

the European Commission and competition authorities in the UK and Spain. Vodafone vigorously disputes such allegations. Even if mobile operators are deemed to be dominant in the provision of mobile termination services, concerns as to price squeezing could only be relevant if Vodafone competed in the same downstream "effects" market as fixed line operators. This is manifestly *not* the case, with the result that on net mobile to mobile prices are driven by competition between mobile operators, not by exclusionary intent. Purchasers of these services will invariably procure their fixed line services from another operator and Vodafone has seen no empirical evidence to suggest substitution as between fixed to mobile calls and the on-net VPN services offered by mobile operators. It is unsurprising in these circumstances that, despite careful and lengthy examination in many cases, no competition authority – so far as Vodafone is aware – has supported CompTel/ASCENT's assertions.

Vodafone provides below an overview of NRA proceedings on MTRs in Vodafone markets addressed by AT&T and CompTel/ASCENT:[5]

- ***Australia***. The Australian Competition and Consumer Commission ("ACCC") is comprehensively reevaluating its current policy regarding MTRs – having previously declared mobile termination to be a 'declared service' since 1997 and subject to constraint designed to ensure that fixed to mobile termination rates tracked movements in retail prices. The ACCC in April 2003 initiated a further proceeding and sought comment on a variety of issues concerning MTRs, including termination costs, the appropriate market classification of mobile termination, and network effects. Its conclusions are expected to be issued in the first quarter of 2004.

- ***France.*** The Autorite' de Regulation de Telecommunications ("ART") required mobile operators to reduce their MTRs from 17.1 eurocents/min. to 14.9 eurocents/min. as of Jan. 1, 2004. ART is expected to conduct a further market review in 2004 as part of the implementation process of the new EU Communications Regulatory Framework. Moreover, ART has already commenced work on new price caps for the 2005-2007 period.

- ***Germany.*** CompTel/ASCENT is particularly critical of RegTP's actions regarding MTRs. RegTP, however, is expected to conduct a further market review in 2004 as part of the implementation process of the new EU Communications Regulatory Framework. In the meantime, there is no evidence to suggest that MTRs in Germany have been "excessive" when compared to outcomes in markets where direct regulatory interventions have been undertaken.

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[5] Vodafone addresses markets in which it holds a controlling or substantial interest in a mobile operator.

- ***Greece***. In February 2003, the National Telecommunications and Post Commission ("EEET") designated Vodafone and Cosmote as companies with significant market power in the national interconnection market. Vodafone is thus obligated to set interconnection rates according to transparent cost-based principles, apply non-discrimination, and meet all reasonable requests for access to networks by competitors. In September 2003, EEET and mobile operators, including Vodafone, agreed to reductions of MTRs. EEET conducted a further market review in late 2003 as part of the implementation process of the new EU Communications Regulatory Framework, and its conclusions are due to be published in early 2004.

- ***Ireland.*** In Ireland, the Commission for Communications Regulation ("ComReg") has already supported reductions of MTRs by mobile operators, including Vodafone. Moreover, ComReg has initiated its market review consultation from October through December 2003 as part of the implementation process of new EU Communications Regulatory Framework and is due to publish its conclusions in the first quarter of 2004.

- ***Italy.*** In February 2003, the Italian Communications Authority ("Agcom") established a reduced MTR for average fixed-mobile call termination rates of 14.95 eurocents/min, effective June 2003, and will undertake a further market review in 2004 as part of the implementation process of the new EU Communications Regulatory Framework.

- ***Japan.*** In March 2003, the Ministry of Public Management, Home Affairs, Posts and Telecommunications ("MPHPT") and Japanese mobile operators agreed to voluntary reductions of MTRs for fixed-mobile calls, with provisions allowing NTT customers to 'override' existing rates from March 2004.

- ***Netherlands.*** In December 2003, the Independent Post and Telecommunications Authority ("OPTA") and mobile operators agreed to reductions of MTRs, which are expected to result in MTR reductions of 40-50% from previous levels. The first stage of reductions became effective January 1, 2004, and further reductions are likely in 2005. OPTA is expected to conduct a market review in 2004 as part of its implementation process of the new EU Communications Regulatory Framework.

- ***Spain.*** In July 2002, the Comision del Mercado de las Telecomunicaciones ("CMT") effected reductions of MTRs for Telefónica Móviles and Vodafone by 17.13%. In October 2003, the NRA established further MTR reductions for both carriers by 7% each, and of a third carrier, Retevisión Móvil by 12%. The CMT is expected to conduct a market review in 2004 as part of the implementation process of the new EU Communications Regulatory Framework.

- ***Sweden.*** Since 1999, the National Post and Telecom Agency ("PTS") has intervened several times to require Telia Mobile to lower its MTRs, and in January 2002 required Telia Mobile to lower its MTRs to 11 eurocents/min. The PTS has also sought to impose price caps on Vodafone and Tele 2's MTRs. The PTS is currently constructing a LRIC cost model with a view to setting revised rates under the new EU Regulatory Framework by the middle of 2004.

- ***United Kingdom.*** Between 1998 and 2002, O2 and Vodafone decreased MTRs yearly by RPI-9% in accordance with Competition Commission requirements. OFTEL required a further reduction of 15% in July 2003 (following another Competition Commission investigation) and is proposing further reductions in 2004/5 and 2005/6 which will reduce rates to approximately 7 cents per minute by 2006.

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

Respectfully submitted,

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