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December 16, 2005

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

Dear Ms. Blue:

On behalf of AT&T Inc. ("AT&T"), I am pleased to respond to the request of the United States Trade Representative ("USTR") for comments pursuant to Section 1377 of the Omnibus Trade and Competitiveness Act of 1988, 19 U.S.C. Section 3106, concerning implementation of the World Trade Organization ("WTO") Basic Telecommunications Agreement.

AT&T serves millions of customers around the globe, including residential, small-business, wholesale, enterprise, global and government customers, and delivers an unsurpassed portfolio of traditional and IP-based voice, broadband Internet, data transport, wireless and video services. AT&T is the largest U.S. provider of international, long distance, local voice and broadband DSL services, and provides services to virtually every country and territory in the world. AT&T also holds a 60 percent ownership of Cingular Wireless, the leading U.S. wireless carrier.

AT&T strongly supports USTR's important work to encourage WTO Members to meet their commitments in basic telecommunications and value-added network services under the WTO General Agreement on Trade in Services ("GATS"). USTR's efforts to ensure compliance with those commitments have improved foreign market opportunities for the U.S. telecommunications industry. For the 2006 Section 1377 review, AT&T focuses on the significantly above-cost rates charged to U.S. carriers to terminate U.S. international calls on wireless networks in many countries, which fail to meet WTO requirements for cost-oriented and reasonable termination rates. AT&T is also very

concerned by universal service subsidy requirements in India and Jamaica, which do not comply with these countries' WTO obligations.

Excessive Mobile Termination Rates: The very high rates U.S. carriers pay to terminate calls on foreign mobile networks are a huge and fast-growing problem and are reversing progress toward cost-based international termination rates in the markets of many U.S. trading partners. These high termination fees inflate the settlement payments of AT&T and other U.S. carriers and cause higher prices to U.S. consumers. In the last four years, the number of countries in which AT&T is required to pay mobile surcharges (*i.e.*, in addition to the fixed termination rate) to its foreign correspondents has increased from approximately 30 countries in 2001 to approximately 150 countries today.

The increasing volume of U.S.-outbound international calls terminated on foreign mobile networks exacerbates the adverse effect of high mobile termination rates. Global mobile subscribership and mobile traffic volumes are increasing at a very rapid rate, including in the developing world. As a result, a growing percentage of international traffic now terminates on mobile phones. According to *TeleGeography*, mobile subscribers accounted for 56 percent of total global subscribers in 2003 and about thirty percent of all international calls terminated on mobile phones in that year, with about half of this traffic terminating in Europe.[1]

The rates to terminate international traffic on a foreign mobile network are frequently far higher than the rates to terminate traffic on a fixed network in the same foreign market. AT&T must pay over $0.20 per minute to terminate calls to foreign mobile phones in otherwise competitive countries where fixed network termination rates are as low as $0.02 per minute. Even if generous assumptions are made about the costs of mobile technology, infrastructure and any absence of economy of scale efficiencies, there is no legitimate justification for these wide differences between fixed and mobile termination rates. In contrast, the FCC has reported that "mobile termination rates in the United States are comparatively negligible at $0.005 per minute, about the same as the average rates for terminating traffic on fixed networks."[2]

As USTR noted in the 2005 Section 1377 Review, WTO Member countries with obligations under the Annex on Telecommunications are required to "ensure 'access to and use of' public telecommunications transport networks and services on terms that are 'reasonable.'"[3] Additionally, "where a WTO member with Reference Paper commitments

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[1] *TeleGeography 2005*, at 55.

[2] *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Eighth Report, 18 FCC Rcd. 14783, ¶ 207, (rel. Jul. 14, 2003) ("*FCC Eighth Mobile Report*").

[3] USTR, *Results of the 2005 Section 1377 Review of Telecommunications Trade Agreements*, at 5.

has made basic telecommunications commitments covering mobile services, and a mobile supplier meets the criteria to be designated a 'major supplier,' that Member must ensure that interconnection rates are provided on a 'cost-oriented' basis."[4] The high rates that U.S. carriers are required to pay to terminate international calls on mobile networks in many WTO Member countries are neither reasonable nor cost-oriented as their WTO obligations require.

Many national regulators have found that mobile operators have market power over termination on their networks under the Calling Party Pays ("CPP") system that is used in most foreign countries.[5] Unlike the Receiving Party Pays ("RPP") system, which is used in the United States, Canada, and a few other countries, the CPP system impedes the operation of market forces to reduce termination rates. (See, for example, *European Commission Recommendation 2003/31/EC on relevant product and service markets within the electronic communications sectors susceptible to ex ante regulation*, OJ L 114, Aug. 5, 2003, Explanatory Memorandum at 32-34.) An ITU survey has found average fixed-to-mobile interconnection rates to be approximately *20 times* higher under CPP regimes than under RPP regimes. ITU, *Mobile Overtakes Fixed: Implications For Policy and Regulation* (2003) at 25, Fig. 9.

Contrary to the claims that are frequently made by foreign mobile operators, retail competition in CPP regimes fails to mitigate the market power that CPP mobile operators enjoy over call termination on their networks. Under CPP, the person who initiates the call to the mobile phone pays the mobile operator for the mobile termination, while the called party, who is a customer of the mobile operator, is not charged for the termination. Because the consumer who subscribes to the CPP mobile operator is not the same consumer who pays the CPP mobile operator for call termination, there is little or no market constraint on CPP mobile operators to reduce high call termination fees.[6]

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[4] *Id.*

[5] *See, e.g.*, EU Independent Regulators Group, *Principles of Implementation and Best practice on the application of remedies in the mobile voice call termination market*, Apr. 1, 2004, at 12 (CPP mobile operator has monopoly control "over the access to end-users that are connected to its network"); Office of Utilities Regulation, Jamaica, *Assessment of Dominance in Mobile Call Termination*, Sept. 2, 2004, at 36 ("All mobile carriers are dominant with respect to the call termination service offered."); Australian Competition and Consumer Commission, *Mobile Services Review, Mobile Terminating Access Service*, Final Decision, Jun. 2004, at vi ("the Commission finds that all mobile operators – irrespective of their size – have market power when it comes to terminating calls on their network"). *See also*, *FCC Eighth Mobile Report,* ¶ 208 ("a widely accepted explanation of why mobile termination rates are high in Europe and other CPP markets is that CPP confers a form of market power on mobile operators with regard to the setting of mobile termination charges").

[6] There is no effective demand-side substitute for the calling party or the called party, because the potential substitutes (*e.g.*, placing calls to fixed rather than mobile lines,

Consequently, the CPP system encourages higher mobile termination rates. (See, for example, *Call Termination Fees: The U.S. In Global Perspective*, J. Scott Marcus, at 8 (CPP "tends to create perverse economic incentives. Carriers tend to be motivated to set termination rates vastly in excess of real costs, because in doing so they raise, not their own costs, but rather the costs of their rivals").[7]

CPP mobile operators are therefore "major suppliers" under the WTO Reference Paper. A CPP mobile operator plainly 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 [their] position in the market," as required by the Reference Paper. Indeed, foreign mobile operators amply demonstrate their "ability to affect the terms of participation" in the relevant market when they set international mobile termination rates at unreasonably high levels. Similarly, because foreign mobile operators control all call termination on their networks, U.S. carrier resistance to requested rate increases carries the risk of service-affecting retaliatory action including the blocking of calls.

AT&T is particularly concerned by the excessive rates paid to terminate U.S. calls on mobile networks in *Austria, Belgium, Bulgaria, Estonia, Germany, Greece, Grenada, Iceland, Jamaica, Italy, Malta, Morocco, Netherlands, New Zealand, Peru, Poland, Portugal, Romania Spain* and *Switzerland*. Although national regulators have taken some action to address high mobile rates in some of these countries, and a number of these countries have begun to reduce these rates, much more needs to be done by all these countries to comply with their WTO obligations to ensure that interconnection rates for international calls terminating on mobile networks are both cost-oriented and reasonable. In all of these countries, AT&T currently pays 17 cents or more to terminate U.S. international calls on mobile networks. In a number of these countries, AT&T pays 20 cents or more to terminate these calls.

USTR also should address the following market access barriers in Jamaica and India, which are contrary to these countries' WTO commitments.

Jamaica. Jamaica is the second largest Caribbean destination for AT&T's U.S.-outbound international calls and has made WTO basic telecommunications commitments requiring the provision of market access and national treatment for the cross-border supply

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sending short text messages rather than voice calls, or utilizing call-back services) would undermine the quality and convenience factors that create demand in the broader mobile market. There also is no effective supply-side substitute, which would require a competing operator to have access to the details of the end user's SIM card, and the mobile operator can simply refuse to share this information with other operators.

[7] Available at: ftp://ftp.zew.de/pub/zewdocs/div/IKT04/Paper_Marcus_parallel_Session.pdf.

of international services through its "exclusive private operator."[8] Jamaica also has made commitments under the WTO Reference Paper to ensure that "major supplier" carriers provide interconnection for these services at cost-oriented interconnection rates.[9] In addition, Jamaica is required by the WTO Annex on Telecommunications to ensure the provision of reasonable rates for access to and use of public telecommunications transport networks and services. C&W Jamaica, the former monopoly provider in Jamaica, is the exclusive private operator referred to by Jamaica's WTO commitments and also is a "major supplier" under Jamaica's Reference Paper commitments.[10] As described above, AT&T pays C&W Jamaica rates of approximately 17 cents per minute to terminate U.S.-international calls to mobile phones in Jamaica, which far exceed the cost-oriented and reasonable interconnection rates for these services that are required by Jamaica's WTO commitments.

This country also has acted inconsistently with its WTO commitments by requiring AT&T and other suppliers of cross-border international services to Jamaica to pay a highly discriminatory and unreasonably burdensome "universal service" levy introduced in June 2005 to fund broadband Internet access for schools and libraries in Jamaica. The levy of 3 cents per minute for fixed-terminated calls and 2 cents per minute for mobile-terminated calls applies only to international-inbound traffic terminating in Jamaica, and assists in keeping termination rates for these calls above cost-oriented and reasonable levels. Because this levy does not apply to international-outbound calling from Jamaica or to domestic calling within that country, it imposes the entire burden of subsidizing this Jamaican universal service program on U.S. and other non-Jamaican carriers and their customers.[11] Indeed, in announcing this levy, Jamaica's Minister of Commerce, Science and Technology "emphasized that the levy would not be a charge on the Jamaican consumer, as it would only be applied to incoming international calls."[12]

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[8] World Trade Organization, Fourth Protocol to the General Agreement on Trade in Services, *Jamaica – Schedule of Specific Commitments Supplement 1*, at 2 (Apr. 11, 1997).

[9] *Id.* at 8.

[10] *See, e.g.,*, Office of Utilities Regulation, Jamaica, *Assessment of Dominance in Mobile Call Termination*, Sept. 2, 2004, at 36 (finding all mobile carriers in Jamaica, including C&W, to have market power over call termination on their networks).

[11] Unlike Jamaica's approach, the U.S. universal service fund is funded by U.S. domestic end-user revenues. *See* 47 C.F.R. Sect. 54.709(a)(1). The discriminatory and non-cost-based nature of Jamaica's charges is further shown by its requirements that the levy is "payable by third parties" (*i.e.*, by carriers sending traffic to Jamaica) and is "in addition to" cost-based rates. Ministry of Commerce, Science and Technology, Jamaica, Ministerial Order, Apr.19, 2005, Sect. 5.

[12] Government of Jamaica, Ministry of Commerce, Science and Technology, News Stories, *Government Imposes Levy on Incoming International Calls*, http://www.mct.gov.jm/call_levy.htm.

Jamaica's levy on inbound international calls fails to qualify as a legitimate universal service obligation under the WTO Reference Paper, which states that universal service "obligations will not be regarded as anti-competitive *per se*, provided they are administered in a transparent, non-discriminatory and competitively-neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Member."[13] The FCC has long made clear that "universal service obligations that are levied disproportionately on foreign-originated calls clearly violate these principles."[14]

There is no justification for requiring operators sending international calls to Jamaica and their customers to bear the entire funding burden for this Jamaican domestic program. Inbound international calls to Jamaica derive no greater benefit from this universal service program than Jamaica's outbound international and domestic long distance calls – if any such benefit exists at all. Jamaica's failure to require operators providing domestic and outbound international services in Jamaica to provide an equitable share of such funding imposes a discriminatory and unreasonably burdensome funding obligation on U.S. and other non-Jamaican operators providing inbound calls that artificially raises the cost of international calling and distorts international traffic flows by encouraging the use of less efficient routing arrangements.[15] Indeed, such unfair subsidization requirements, if more widely adopted, potentially could reverse much recent progress in reducing international calling costs. However, the Reference Paper does not allow foreign countries to impose disproportionate universal service funding requirements on U.S. carriers and their customers. The Reference Paper makes clear that such discriminatory and unreasonably burdensome treatment is "anticompetitive *per se*." As the FCC stated in 1997, universal service subsidies "borne disproportionately . . . by consumers from net payer countries [] are not consistent with [WTO Reference Paper] principles."[16]

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[13] WTO, *Jamaica – Schedule of Specific Commitments Supplement 1*, at 10.

[14] *International Settlement Rates*, 12 FCC Rcd. 19,806, ¶ 87 (1997). *See also, id.*, ¶ 148 ("We disagree with commenters who argue that foreign carriers are entitled to require that universal service requirements be financed disproportionately through settlements revenues. . . . [W]e believe that universal subsidies must be nondiscriminatory and transparent").

[15] Although Jamaica has collected some universal service funding on domestic calls in Jamaica, Jamaican law places an upper limit of "five per cent of the projected eligible revenues derived by licensees from provision of the relevant services" on universal service obligations recommended by the regulator. *See* Jamaica Telecommunications Act 2000, Sect. 42(2)(a). The levy on international-inbound calls far exceeds this upper limit. The 3-cent per minute levy on fixed terminated call revenues equates to more than 100 percent of these revenues and the 2-cent levy on international-inbound mobile-terminated call revenues equates to approximately 15 percent of these revenues.

[16] *International Settlement Rates*, 12 FCC Rcd. 19,806, ¶ 148.

The inbound call levy is also more burdensome than necessary in other respects. Because Jamaica has made no showing that the levy was properly calculated, Jamaica provides neither the transparency required by its WTO obligation nor any assurance that the level of the fees is not unreasonably burdensome. Jamaica also establishes a more burdensome obligation than necessary by imposing the greater cost of broadband rather than narrowband access to further its Internet access objective.

India. India is a critical market for U.S. companies and has announced important reforms that could vitalize telecommunications competition in that country. Within the past year, TRAI has issued Orders requiring major supplier tariff reductions towards cost-based rates for both domestic and international private leased circuits. In October 2005, the Cabinet finalized its plan to uplift the permissible level of foreign direct investment in telecom licensees to 74 percent. Thereafter in November 2005, the Minister announced a proposal to streamline and lower entry barriers for International, Domestic and Virtual Private Network licenses, establishing a combined license for all activity. If these polices are implemented in a manner that impose only the minimal necessary regulations on new market entrants, the competitive benefits of these policy improvements will be swift and far-reaching, enhancing the well being of individuals, companies and the broad economies of India and the United States. In particular, any licensing or investment regulations intended to promote valid social, economic or national security goals should be narrowly tailored to promote those goals without otherwise impeding new entrant competition and investment.

AT&T urges USTR to work in close cooperation with the Indian government to ensure that the detailed guidelines that implement the new investment and licensing rules provide foreign-invested companies with an optimal ability to innovate and compete in the India market. Further, USTR should urge India to improve its WTO market access and national treatment commitments to reflect its current pro-liberalization telecom initiatives, thereby providing investors with the necessary confidence that the changes are permanent and enforceable.

India's Access Deficit Charge ("ADC") regime, which disproportionately impacts consumers making international calls to India, also merits ongoing effort from USTR to ensure that India complies with its WTO commitments. India's telecommunications regulator, the TRAI, implemented the ADC in 2003 in connection with its Telecommunications Interconnection Usage Charge ("IUC") Regulation. The TRAI has stated explicitly that although implemented as part of the IUC Order, the ADC is not an "interconnection charge," which is defined separately in the order as comprising termination or origination charges and carriage charges. Rather, the ADC is a supplemental collection to subsidize socially desirable services, and the TRAI clearly presents the ADC as a component of its overall universal service regime. [17]

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[17] *See, e.g.*, TRAI, *The Telecommunication Interconnection Usage Charges (IUC) Regulation, 2003 (1 of 2003)* (rel. Jan. 24, 2003), at Explanatory Memorandum, ¶ 5. ("The Access Deficit Charge (ADC) is assessed by fixing an affordable level for rental/local call

Many industry participants have raised serious concerns with the ADC, and in particular with the high ADC applied to inbound international long distance traffic, which is currently 3.25 Rupees ($0.072), more than thirty percent higher than the ADC for outbound international calls of 2.50 Rupees ($0.055), and more than ten times higher than the ADC rate for domestic long distance traffic of 0.30 Rupees ($0.0065). Modifications in the ADC rules in October 2003 and January 2005 have provided some limited improvements, but India continues to rely on an imprecise calculation of the access deficit to be recovered and to place a highly unreasonable and discriminatory ADC burden on international service providers and their customers. Further, India's most recent modification in the ADC rules in January 2005, while lowering the ADC international charges, also introduced additional discrimination in the structure of these charges by requiring inbound international calls to pay ADC at a higher rate than outbound international calls. Previously, the same ADC charge applied to both inbound and outbound international calls. The TRAI explained that the different rates for inbound and outbound calls were "so that advantage of ADC reduction benefits Indian consumers more."[18]

The TRAI is currently considering further modifications to the ADC regime, with an anticipated Order in January 2006. In the past year, the Indian government has discovered that some of the leading ILD licensees are illegally profiting, by adding the ADC surcharge to settlement costs with other carriers, but then failing to report that contribution-eligible revenue to the Indian government. The amount of improper charging is reported to exceed US$200 million, and has resulted in formal penalties against Indian carriers.[19]

As AT&T has urged for three years now, the TRAI should eliminate the ADC altogether. As predicted, it is distorting commerce and traffic flows by artificially raising the cost of international calling over bilateral circuits, and driving traffic to gray markets

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charges, special concessionary local call charges in the rural areas, provision of free calls, and any other below cost tariffs that the Regulator may need to specify to make the Basic telecom services affordable to the common man to promote both Universal Service and Universal access as per NTP'99"); *TRAI, The Telecommunication Interconnection Usage Charges (IUC) Regulation, 2003 (2 of 2003)* (rel. Oct. 29, 2003) at Explanatory Memorandum, ¶ 89 ("Further, the ADC regime should ideally be merged with the USO regime over time, say in about 3 to 5 years.").

[18] Telecom Regulatory Authority of India, Notification, Jan 6, 2005, at 47, available at: http://www.trai.gov.in/regu6jan05.pdf.

[19] *See* Telecom Disputes Settlement & Appellate Tribunal, Petition No. 3 of 2005, Reliance Infocomm Ltd v. Union of India (DoT), March, 4, 2005) (upholding penalties issued by DoT to Reliance for, *inter alia*, violations of ADC payment regulations and for masking CLI information from international calls).

which do not always offer high quality.[20] Further, it is failing to accomplish its intended funding objectives, in part because the oversight of how ADC revenues are used remains as imprecise as the calculation of the actual access deficit, and in part because some international carriers are improperly reporting their ADC receipts.

India's ADC regime also fails to comply with its WTO Reference Paper commitment to administer universal service obligations in a transparent and non-discriminatory manner.[21] As with Jamaica's universal service levy on inbound international calls described above, there is no justification for India imposing higher ADC rates on inbound international calls than outbound international calls. There is also no justification for India's higher rates for both inbound and outbound international calls than domestic long-distance calls as international calls obtain no greater benefit from Jamaica's universal service program than domestic long-distance calls.

In addition, the TRAI fails to administer this universal service obligation in a transparent manner and thus provides no assurance that any claimed access deficit is properly calculated or that any ADC receipts are used solely to subsidize legitimate services and for no anticompetitive or other improper purpose.

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[20] *See, e.g.*, *ILD Calls – The Grey Bane*, New Delhi Business Standard, Apr. 20, 2005; *Left Seeks TRAI Chief Resignation*, Indian Express, Jun. 3, 2005.

[21] WTO, Fourth Protocol to the General Agreement on Trade in Services, *India – Schedule of Specific Commitments Supplement 3, Reference Paper*, Apr. 11, 1997, ¶ 3.

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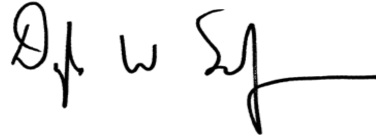
AT&T would be pleased to provide any further information that would be helpful to the Committee.

Respectfully submitted,



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