*Chief Executive Officer*

March 3, 2004

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TWB-204
Washington, DC 20554

**Re:** ***Ex Parte* Presentation**
**IB Docket No. 02-324, IB Docket No. 96-261**

Dear Ms. Dortch:

Telecom Italia Group ("TIG") understands that a decision may be imminent in the Federal Communications Commission ("FCC") pending proceeding on International Settlements Policy Reform (IB Docket No. 02-324) and International Settlement Rates (IB Docket No. 96-261). In reviewing the recent filings in these dockets, TIG has become greatly concerned with the positions being advocated by certain U.S. interexchange carriers requesting that the FCC take action to impose existing benchmarks on all traffic terminating on foreign mobile networks, and propose new lower benchmark rates for such traffic in a Further Notice of Proposed Rulemaking. Because it has been more than a year since TIG initially addressed these issues in its Reply Comments filed in these dockets on January 14, 2003, TIG feels it is important to take this opportunity to update the record and reiterate why it would be inappropriate for the FCC to impose benchmarks on international traffic that terminates on foreign mobile networks.

TIG is active in the ICT sector, particularly in the wireline and wireless telephony markets, and the Information Marketing and directories markets, in Italy and abroad. TIG's activities abroad are mainly focused in the provision of wireless services, and therefore TIG has extensive knowledge of the current wireless regulatory regime in Europe and Latin America.

Attached is a short position paper that confirms some of the considerations TIG earlier developed in relation to the issue of mobile termination tariffs in Europe, and updates some of the figures previously presented. In particular, TIG brings out the following points:

- Costs for transporting calls on mobile networks are higher than on fixed networks
- There is no discrimination between charges for domestic or international termination

- The EU termination rates are not comparable with the USA termination rates as they are based on two different charging principles (Calling Party Pays/Receiving Party Pays)

- The Calling Party Pays model is successfully used throughout the world

- The Receiving Party Pays model is not perfect

- European regulators are actively working to reduce mobile termination rates

- U.S. and European international carriers share the same interests

- Benchmarks on foreign mobile termination rates would not be effective

- U.S. consumers are hurt by excessive mark-ups by U.S. carriers

TIG's position paper is particularly focused on Italy, where the National Regulatory Authority is implementing a regular trend towards the reduction of tariffs and where the market situation is fully compliant with the provisions of the WTO General Agreement on Trade and Services.

TIG hopes that this additional information my prove helpful in better assessing the on-going development of mobile termination rate issues in Europe.

Sincerely,

Marco De Benedetti

Attachment

cc: Chairman Powell
Commissioner Abernathy
Commissioner Copps
Commissioner Martin
Commissioner Adelstein
Sheryl Wilkerson
Jennifer Manner
Paul Margie
Sam Feder
Barry Ohlson

# TELECOM ITALIA GROUP
# POSITION PAPER ON MOBILE TERMINATION RATES

## I. Costs for Transporting Calls on Mobile Networks are Higher than on Fixed Networks.

In most countries with developed fixed communications infrastructure such as Europe, the cost of originating and terminating mobile calls has been higher with respect to the cost of transporting calls on the fixed network (as opposed to some developing countries in which the cost of mobile network is lower than the fixed network). This is reflected in the higher retail rates of calls from a mobile network with respect to the retail rates of calls from a fixed network. This also is reflected in the interconnection charges of terminating calls on a fixed network versus the interconnection charges of terminating calls on a mobile network in countries with a "calling party pays" regime since the call reflects the underlying costs.

This difference is mainly due to the fact that mobile network technological progress entails making relentless investments in order to implement the constant service upgrades required by each new mobile networks generation. As a consequence, economic cost estimates may end up being higher than the accounting costs, as documented by OFTEL[1].

## II. There is No Discrimination Between Charges for Domestic or International Termination

Regardless of the level of the charges involved, EU Regulation enforces a **non-discrimination rule** between interconnection rates for call termination that mobile carriers can charge regardless of whether the call is originated nationally or internationally. Despite sensible differences among regulatory regimes in most of the considered countries, non-discrimination of mobile termination charges among national and international services is granted everywhere, except in the case of serious influence exerted by macroeconomic effects (*i.e.*, currency devaluation). Therefore, U.S. consumers are not discriminated against when they call mobile terminals in Europe.

## III. Calling Party Pays Model is Successfully Used Throughout the World

Concerning in particular the mobile pricing model of Calling Party Pays, it has to be borne in mind that:

- this model has lead to recognized advances in mobile penetration, often crucial to involve the biggest possible number of users. The graph below shows the penetration level of mobile users in Europe where a CPP regime has been implemented since the beginning, whereas the mobile penetration level in the U.S. at the end of 2001 is estimated at around 47-49%[2].

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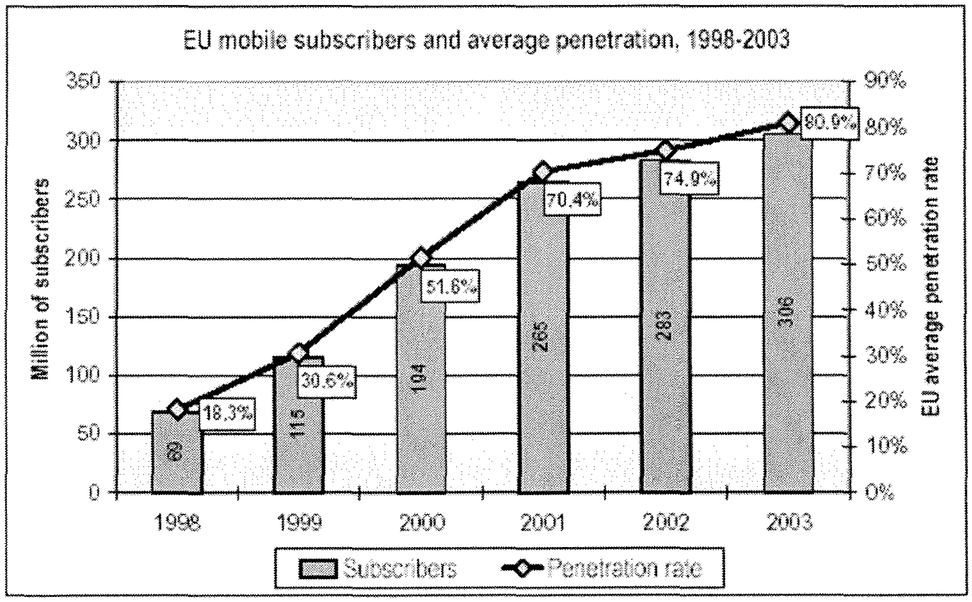
[1] Office of Telecommunications (2002), Accounting depreciation cost based estimates, letter to Competition Commission, 3 May 2002. Available at http://www.ofcom.org.uk/static/archive/oftel/publications/mobile/ctm_2002/account_let0502.pdf

[2] Source Telephia




Source: European Commission 9th Implementation Report on the Telecommunications Package

- the adoption of such a model is contained in many national regulatory rules, hence any attempt to push for its modification for alleged anticompetitive effects should be submitted to competent international bodies, such as the WTO, where appropriate instruments exist to solve these types of controversial matters.

## IV. Receiving Party Pays Model is not Perfect

In interconnection regimes such as found in the U.S., the cost of using the mobile network is typically higher than the cost of using a fixed network, but since there is a "receiving party pays" arrangement, mobile users pay the extra cost for both outgoing and incoming calls from the fixed network. Actually, it can be argued that if a call is made from a mobile to a mobile phone of the same network, the mobile operator is remunerated twice for the same call and therefore the U.S. mobile customer is penalized by incurring higher costs. Therefore, if we apply a non-discrimination rule, if the mobile user in the U.S. pays for incoming calls, the rule should not discriminate between calls that originate in the U.S. or abroad. It is true that the mechanisms of the "receiving party pays" interconnection cause U.S. mobile customers to pay for the extra cost of terminating a foreign originated call to a U.S. mobile phone, but this is also true in the case of a call originated in the U.S. Therefore, if the FCC is concerned about the higher costs incurred by U.S. customers, it should first act on the national market by removing these distortions in order to be coherent.

## V. European Regulators Are Actively Working to Reduce Mobile Termination Rates

In Europe, the costs of interconnection on the fixed and mobile networks are regulated by National Regulatory Authorities which have the power to impose reductions on the rates proposed by dominant fixed and mobile operators. While until recently, focus of EU regulation had been on fixed incumbent operators, the mobile termination issue is becoming more and more relevant as the growth of mobile telephony in terms of subscribers has in most cases equalled or exceeded the number of fixed lines.

For instance, during the past year, most European NRAs have taken action or are planning to take action in reducing mobile termination charges. In **Italy**, the National Regulatory Authority, AGCOM, implemented in February 2003 a further tariff manoeuvre, setting the average tariff at 14.95 euro-cent. This manoeuvre led to a reduction of 25% in the mobile termination tariffs in Italy. This decrease has been acknowledged by the EU Commission, which, in its IX Implementation Report of 2003, stated that "Since August 2002, average interconnection charges for SMP operators has decreased by 15.3%, while for non-SMP operators has increased slightly. **The main decreases in the charges since August 2002 have been achieved in Italy** (-25% for one SMP operator), in France and Spain (around –18% for both SMP operators), in Ireland -13% for the SMP operator Vodafone), in Belgium (-14% for one SMP operator) and in Greece, where charges have decreased on average by 9% for the four non-SMP operators, after intervention by the NRA".

In particular, the EU Commission found that, "In August 2003 the EU weighted average interconnection charge for terminating a call on mobile networks was 15.93 euro-cents for the 16 European mobile operators declared by the NRA as having significant market power on the national market for interconnection (SMP). It was 18.98 euro-cents for the remaining 34 mobile operators (covering 55% of the EU market).

The difference in charges between the two classes of operators has arisen mostly during the past year as a result of regulatory intervention by NRAs to bring about cost orientated charges for SMP operators. On the other hand, fixed–to–mobile interconnection charges have increased in the Netherlands by 10% for one non-SMP operator.

The difference between the level of the charges for SMP and non-SMP operators can be explained by the increased number of SMP operators (which now account for 45% of EU subscribers compared to 41% in 2002), but mostly by the cost orientation requirement for interconnection charges on SMP operators. It should be noted that even for non-SMP operators, interconnection charges are sometimes set by the NRAs, for example as a result of intervention on the basis of a competition enquiry or to set a price ceiling to avoid excessive tariffs.

## VI. U.S. and European International Carriers Share the Same Interests

U.S. international carriers and European international carriers are in the same bargaining position with regards to termination rates to be paid to mobile operators since, as previously said, no discrimination is possible between national and international interconnection. Furthermore, it is unlikely that European mobile operators may abuse their dominant position, considering the reduction of the termination charges granted by mobile operators in the past years, following competitive pressure and regulatory interventions. Moreover, the EU Commission is called upon to constantly monitor the market behavior of operators and to apply EU competition rules if a European operator is considered to be abusing its dominant position.

## VII. Benchmarks on Foreign Mobile Termination Rates Would Not Be Effective

Because the level of mobile tariffs is an issue that needs to be dealt with on a national level, and is not a result of discrimination practices between U.S. Carriers and non-U.S. carriers, we believe that any action the FCC might take in its jurisdiction would prove to be non-effective. For instance, if the FCC issued a benchmark order similar to the one on International Settlement Rates for the maximum level of mobile termination tariffs that U.S. carriers would be able to negotiate for bilateral agreements between U.S. and foreign operators, this would only lead to U.S. carriers refiling their outgoing traffic to mobile operators, but not being able to obtain better price conditions. In fact, in competitive national mobile markets, such as found in Europe, all the operators apply – often because of a legal and/or a regulatory provision - the same termination charges which are being progressively reduced and brought in line with their costs by NRAs, in a non-discriminatory way. As a paradox, forcing U.S. carriers to refile traffic terminating in one country (country A) to foreign mobile operators offering services in another country (country B) is clearly inconvenient. This would imply extra costs since U.S. carriers would have to pay in addition to the mobile termination charge to the international fixed or mobile operator in country A, an additional transit fee to the operator in country B.

It is important to note that while the FCC benchmark order had a tangible effect on the revenues of operators to which it applied which were losing the traffic from U.S. carriers and therefore the potential incoming revenues derived from it, in case of mobile foreign operators, a benchmark order would not harm the mobile operators which would in any case receive the same amount of revenue through other carriers.

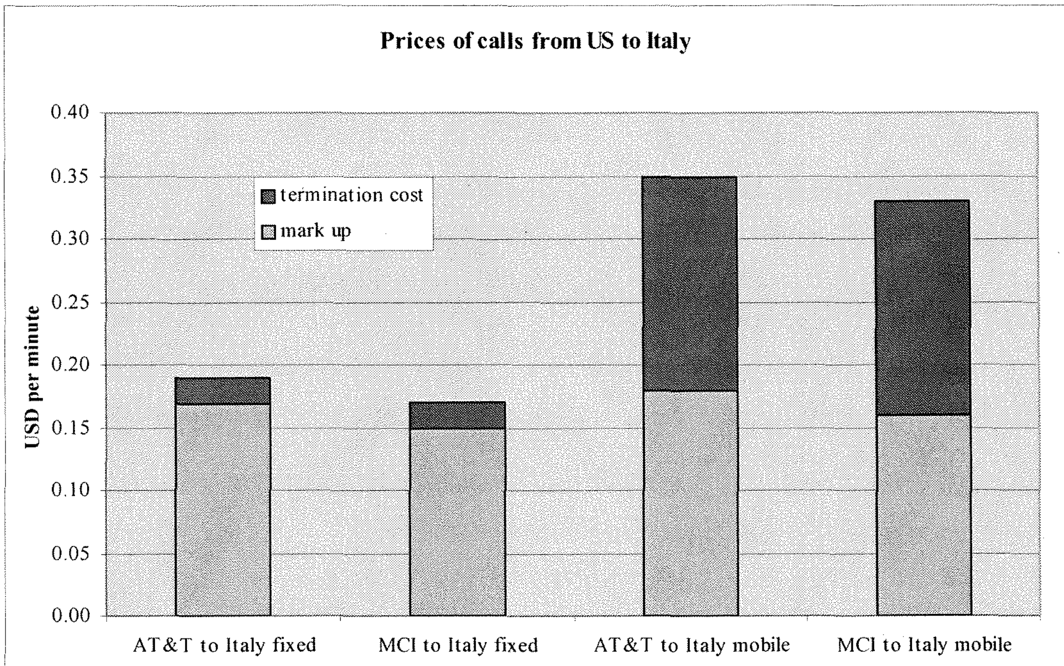
This applies to countries, like Italy and other EU countries, where:

1. there is a calling party pays regime;
2. there are rules which ensure non-discrimination of interconnection conditions offered by dominant operators to international and national carriers;
3. there is a liberalized telecommunications market both for fixed and mobile telecommunications;
4. there is regulation in place which ensures cost orientation or regulatory controls over interconnection tariffs of dominant operators (both fixed and mobile);

In other countries where, for example, there is a monopoly or competition is still limited or there is a called party pays regime, and the regulation in place does not ensure a reduction trend of interconnection charges and non-discrimination between national and international operators, it is important to encourage the application of consistent regulatory measures (to be fine tuned with other relevant features of national markets) aimed at promoting the application of fair and sustainable rates.

## VIII. U.S. Consumers are Hurt By Excessive Mark-ups By U.S. Carriers

The level of prices of international calls to mobile phones paid by U.S. consumers is not only due to the price of the termination paid to the foreign mobile operator but also on the mark-up applied by the U.S. carrier to its termination costs. U.S. carriers apply a mark up of **more than 10 U.S. cents on international calls to Italy**, as shown on the following table[3].




## IX. Conclusion

For the reasons stated above, Telecom Italia considers that not only AGCOM – which is by Law a public agency independent from the Italian Government - has so far carried out its mandate in full compliance of international trade agreements and of EU Directives, but also that the Italian market mechanisms have fully anchored TIM's termination rates to a very competitive environment. It must also be noted that no proceedings have been launched in the EU or in Italy against TIM for its termination rates, underlining TIM's complete compliance with domestic and European laws and regulations.

Finally, we confirm that U.S. consumers should be made more aware of the cost of calling an international mobile phone, since few U.S. carriers adequately advertise this issue. In many cases, on U.S. carriers' websites the cost of international calls to a specific country (*i.e.*, Italy) which is shown is that of a call to the fixed network and only in a small footnote at the end of the page it is written that in some cases mobile termination surcharges apply. We are fully confident that the considerations developed above, *i.e.*, the structure of the regulatory framework and the structure of termination in particular, will be taken in due consideration in the assessment of the competitiveness of the mobile termination market in Europe.

[3] Based on data for international calls published on www.att.com and www.mci.com. The prices include the monthly subscription of U.S.D 2.99 for AT&T and U.S.D 2.95 for MCI based on an assumption of 20 international calls per month per residential customer with average duration of 3 minutes.