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January 14, 2005

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Room TW-B204
Washington, DC 20554

Re: Comments in IB Docket No. 04-398

Dear Ms. Dortch:

On behalf of the Caribbean Association of National Telecommunication Organizations ("CANTO"), and further to CANTO's previous letters in IB Docket Nos. 02-324 & 96-261, dated August 11, 2003 and January 16, 2004, which are attached hereto, I am submitting this letter in response to the *Notice of Inquiry* ("*NOI*") on foreign mobile termination rates in the above-referenced docket.[1] CANTO is an industry association that represents 50 Caribbean telecommunications operating companies from 29 countries, and it is a formal member of the International Telecommunication Union ("ITU").[2] The mission of CANTO is to facilitate the provision of quality communications services for regional, economic, social and cultural development for the Caribbean Region.

CANTO notes that the mobile sector has experienced outstanding performance over the past several years, including significant competitive entry, rapid growth in the number of handsets and subscriber penetration, price reductions, increased call volumes, quality improvements, and significant innovation. There also have been (and continues to be) ongoing regulatory proceedings by numerous National Regulatory Authorities ("NRAs") and multilateral bodies to actively address mobile termination rates. During this time, mobile termination rates throughout the world have fallen and are expected to fall further.

Given that U.S. consumers should soon be benefiting from these developments and that there are legitimate concerns as to whether unilateral intervention by the FCC in the global telecommunications market is appropriate, effective, or lawful, CANTO believes that the FCC

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1 The positions espoused by CANTO in these comments are those of the association as a whole, and not necessarily the position taken by each CANTO member.

2 CANTO's member carriers operate in the following countries or territories: Anguilla; Antigua/Barbuda; Aruba; Bahamas; Barbados; Belize; Bermuda; Bonaire; Cayman Islands; Cuba; Curacao; Dominica; Dominican Republic; Grenada; Guadeloupe; Guyana; Haiti; Jamaica; Martinique; Monteserrat; St. Kitts/Nevis; St. Lucia; St. Maarten; St. Vincent & the Grenadines; Suriname; Tortola (B.V.I.); Trinidad & Tobago; Turks & Caicos; and the U.S. Virgin Islands.

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should not intervene in an effort to force reductions in foreign mobile termination rates. The FCC instead should continue to monitor rate levels, the surcharge practices of US carriers, efforts to sensitize US consumers to this issue, and foreign regulatory activities. CANTO would note that U.S. carriers have not been passing on reductions in mobile termination rates within the Caribbean Region to their U.S. consumers. Should specific problems arise in particular countries, the FCC can respond through bilateral discussions or by employing other established international fora to address US public policy concerns.

The FCC Should Permit Marketplace and Technological Forces, as well as Multilateral Institutions and Processes and the Ongoing Efforts of NRAs, to Address Any Perceived Issues Regarding Foreign Mobile Termination Rates.

Current market dynamics and technological developments, including, for example, accelerating competitive entry[3] and the introduction of Voice over Internet Protocol ("VoIP") services, are imposing significant downward pressure on foreign mobile termination rates in many countries. At the same time, many NRAs around the world are looking carefully at this issue, often in formal and transparent regulatory proceedings. Formal or informal regulatory pressures have been applied, or are actively underway, to reduce mobile termination rates in Australia, New Zealand, Europe, Asia, North America and South America. In some cases, NRAs have initiated efforts to impose price regulation on mobile termination rates. In certain countries, mobile operators have voluntarily reduced mobile termination rates and the NRAs have sought voluntary agreements to reduce fixed-to-mobile termination rates.[4] Fixed-to-mobile termination rates have fallen significantly in response to regulatory intervention by the relevant NRAs.[5]

To the extent that mobile termination rates may need to be regulated, CANTO submits that any such regulations should be imposed only by the local NRA with jurisdiction over the terminating carrier and its network. CANTO believes that each country's NRA has the responsibility to review the termination rates charged by its mobile operators and to take any actions that are necessary and appropriate. The local NRA is the only entity that possesses the necessary information, competence and perspective to adopt policies that will promote the public interest consistent with the specific marketplace, economic and social conditions of its country.

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3 *See, e.g.*, European Commission Electronic Communications Regulation and Markets 2004 (COM(2004) 759 final), Vol. 1, at 48 (Dec. 12, 2004) ("*Tenth Implementation Report*") noting that in Europe there are indications that competition is intensifying. (*available at* http://europa.eu.int/information_society/topics/ecomm/all_about/ implementation_enforcement/annualreports/10threport/index_en.htm).

4 Mobile operators in Japan reduced their mobile termination rates beginning in 2001. USTR Releases 2002 National Trade Estimate Report on Foreign Trade Barriers, United States Trade Representative, Apr. 2, 2002, at 206 (*available at* http://www.ustr.gov/reports/nte/2002/index.htm).

5 For example, the average fixed-to-mobile termination rate for mobile operators in the EU which were found to have significant market power fell by 14% between July 2003 and July 2004. The reduction in fixed-to-mobile termination rates for mobile operators without significant market power fell by 13% for the same period. *See Tenth Implementation Report*, Vol. II at 35-36.

Unilateral Action By the FCC is Not Warranted or Beneficial

As a preliminary matter, CANTO notes that it is unsettled as a matter of U.S. law whether the FCC has sufficient authority under the Communications Act of 1934 to take actions which may create conflicts with foreign laws and regulations.[6] On a related point, consistent with established notions of international comity and the procedures and requirements of multilateral institutions such as the WTO, the OECD and the ITU, CANTO believes that it would be inappropriate for the FCC to engage in unilateral intervention in the global telecommunications marketplace. CANTO respectfully submits that the FCC does not speak for the global community and may be subject to parochial pressures from U.S. carriers to take actions that benefit U.S. carriers at the expense of foreign carriers, foreign consumers, and in some cases even U.S. consumers. For example, certain foreign mobile network operators have previously informed the FCC that U.S. carriers have not fully passed on reductions in mobile termination rates to U.S. consumers.[7] CANTO notes that U.S. carriers have not been passing on reductions in mobile termination rates within the Caribbean Region to their U.S. consumers. CANTO urges the FCC to propose a policy that would prohibit U.S. carriers from applying any mark-up to foreign mobile termination rates, just like the FCC has prohibited interexchange carriers from marking-up their universal service fund contributions.

This foreign mobile termination rate issue is very different from the accounting rate system that existed prior to the FCC's adoption of the benchmarks regime in 1997, where national regulators did not actively prescribe, review or regulate the settlement rates imposed on the termination of international switched telephony. Most countries today have independent regulatory bodies which are fully capable of dealing with mobile termination rates. To make any informed decision regarding the regulation of foreign mobile termination rates, the FCC would need to obtain and examine extensive information about conditions in the foreign market. However, the FCC is limited jurisdictionally in its ability to collect this information. In order to minimize jurisdictional conflicts while respecting marketplace forces, CANTO urges the FCC to avoid intervening through unilateral action designed to prescribe the termination rates assessed by mobile telecommunications carriers in other countries.

Moreover, the interests of U.S. consumers are normally identical to the interests of domestic consumers in foreign countries who originate calls terminating on mobile networks with regard to the level of termination rates. CANTO expects that the NRA will take consumer interests fully into account when deciding the often complex issues regarding the preferred structure and level of mobile termination rates. Unilateral action by the FCC can therefore be avoided because it is not necessary to ensure just and reasonable foreign mobile termination rates.

Unilateral intervention by the FCC may also lead to or cause service disruptions. For example, traffic destined for a foreign mobile network may be delivered initially to an intermediate foreign carrier, which then hands-off the traffic to the foreign mobile carrier for termination. If FCC action results in the intermediate carrier receiving insufficient funds to pay the mobile termination rate, it is possible if not likely that the intermediate foreign carrier will refuse to

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6 *See* Cable & Wireless plc v. FCC, 166 F.3d 1224, 1230 (D.C. Cir 1999).

7 *See* Comments by NTT DoCoMo, Inc., IB Dkt. No. 02-234, at 3-5 (Jan 14, 2003); Comments of Vodafone Americas, Inc., IB Dkt. No. 02-234, at 27 (Jan. 14, 2003).

provide this function at a loss, thereby resulting in a disruption in service for U.S. consumers.

For these reasons, the FCC should not seek to intervene in the regulation of non-U.S. mobile termination rates. The most effective response would be to allow the market and foreign regulators adequate time to address this issue. The FCC should express any concerns regarding mobile termination rates through the appropriate multilateral fora without impinging upon the authority of the NRA to address the issue in the first instance within its own country. U.S. carriers have incentives to seek out low termination rates, including those for mobile calls. If subscribers are dissatisfied by a carrier's imposition of foreign mobile termination surcharges or failure to notify them about such charges, the subscriber can look to another more responsive carrier for service.

The Rates Estimated by the R-TCP Study Does Not Provide a Reasonable Framework for Evaluating Whether Foreign Mobile Termination Rates are Excessive.

CANTO believes that mobile termination rates in countries with a CPP regime are intended to recover a broader range of retail, wholesale and other costs than is currently reflected in the R-TCP model. Accordingly, it is CANTO's view that the Tariff Component Pricing methodology, as revised by AT&T, fails to account for numerous relevant costs incurred by foreign telecommunications carriers, especially in less developed countries, and employs inaccurate and improper inputs. CANTO's concerns with the R-TCP model are discussed at length in its letter dated January 20, 2004, which was submitted in IB Docket Nos. 02-324 & 96-261.

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For the reasons discussed above, CANTO strongly advocates that the FCC not intervene in the regulation of non-U.S. mobile termination rates. Instead, CANTO urges the FCC to permit marketplace and technological forces, as well as multilateral institutions and processes and the ongoing efforts of foreign NRAs, to continue to address any perceived issues regarding foreign mobile termination rates.

Yours respectfully,

Ms. Regenie Fräser
Secretary General