

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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In the Matter of )

The Effect of Foreign Mobile Termination )  
Rates on U.S. Customers )

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IB Docket No. 04-398

**REPLY COMMENTS OF NTT DOCOMO, INC.**

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## SUMMARY

The majority of parties filing comments in this proceeding share DoCoMo's view that there is no need for the Commission to take regulatory action with respect to the rates charged by foreign mobile operators to terminate calls on their networks.

There is near universal agreement that such rates do not discriminate against U.S.-originated calls. AT&T and MCI argue that foreign mobile termination rates discriminate against U.S.-originated calls because fixed-line operators in other countries often have mobile affiliates. This argument, however, would have merit, if at all, only in countries where there is one fixed-line operator and one or more mobile operators that are wholly owned by the fixed-line operator. There are few, if any, such countries. According to a recent survey by the ITU, approximately 80 percent of countries have competitive mobile markets with two or more operators. In Japan, there are four major operators. In such markets, it would be economically irrational for any fixed-line operator to willingly pay inflated termination rates to competing mobile service providers.

There is also near universal agreement that, because foreign mobile termination rates do not discriminate against U.S.-originated calls, the interests of foreign fixed-line operators and consumers are aligned with those of U.S. fixed-line operators and consumers. As a consequence, foreign carriers and consumers have an incentive to ensure that the prices they pay for mobile termination are set at efficient cost-oriented levels.

Every party that discussed the issue also agrees that national regulatory authorities in other countries are addressing the rates charged by mobile operators to terminate calls on their networks. As a result of marketplace forces and regulatory intervention, foreign mobile termination rates are declining. Although the U.S. international carriers complain about the level

of foreign mobile termination rates, their underlying concern is the “dissonance” between calling party pays and receiving party pays pricing regimes. The choice of the most appropriate pricing framework for mobile services, however, is a decision that rests within the sound discretion of individual national regulatory authorities that should not be challenged by the Commission.

Moreover, as the GSM Association aptly points out, “[a]dopting regulations aimed at corraling mobile termination rates in foreign markets would exceed the limits of the Commission’s jurisdiction.” Wholly apart from the Commission’s legal authority, the commenting parties have explained what an enormous and impractical undertaking it would be for the Commission to meaningfully analyze and evaluate such rates in over 160 countries. Benchmarking is not a solution. Moreover, were the Commission to undertake such an analysis, it would risk becoming mired in purely domestic disputes in other countries. As a consequence, the Commission may wish to pursue its inquiry of mobile termination rates in multilateral fora such as Study Group 3 of the ITU-T, which is actively considering the issue.

There is total agreement among the commenting parties that the Commission has a legitimate interest in ensuring that foreign mobile termination rates do not discriminate against U.S.-originated calls. The Commission should therefore continue to be vigilant in ensuring that U.S. consumers are not being forced to pay discriminatory mobile termination rates. The Commission may also wish to consider ways to promote consumer education and awareness of such rates.

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To: The Commission

**REPLY COMMENTS OF NTT DOCOMO, INC.**

NTT DoCoMo, Inc. (“DoCoMo”), by its attorneys, hereby replies to the comments that were filed in response to the Commission’s Notice of Inquiry (“*Notice*”) in the above-captioned proceeding on January 14, 2005.<sup>1</sup>

**I. INTRODUCTION**

The majority of parties filing comments in this proceeding – including domestic, foreign and multinational operators – share DoCoMo’s view that there is no need for the Commission to take regulatory action with respect to the rates charged by foreign mobile operators to terminate calls on their networks. Simply stated, there is no identifiable problem that requires a sweeping regulatory response by the Commission.

The record demonstrates that the rates charged by foreign mobile operators to terminate calls on their networks do not discriminate against U.S.-originated or other international calls. The record is also clear that these rates are being scrutinized by national and regional regulatory

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<sup>1</sup> See *The Effect of Foreign Mobile Termination Rates on U.S. Customers*, Notice of Inquiry, 19 FCC Rcd 21395 (2004) (“*Notice*”). A list of the abbreviations used to identify the parties filing comments in this proceeding appears as an Appendix to these reply comments.

authorities and that, as a consequence of this regulatory review and marketplace forces, mobile termination rates are continuing to decline.

A small number of commenters – primarily three U.S. interexchange carriers and their trade association – take a contrary view. These commenters, however, have not identified any credible evidence of discrimination against U.S.-originated calls by foreign mobile operators. These commenters also make sweeping statements about increasing mobile termination rates, but the record shows their claims to be incorrect. Although they quote approvingly the decisions of foreign national regulatory authorities with respect to foreign mobile termination rates, the commenters would have the Commission conclude that these very same regulatory authorities cannot be relied upon to address such rates. Notwithstanding their inability to present any evidence in support of their arguments, these commenters would, in effect, have the Commission assume responsibility for setting mobile termination rates for the rest of the world, a task for which the Commission has neither the jurisdiction nor the resources.

An even smaller group of commenters would have the Commission involve itself in the domestic regulatory affairs of other countries in matters having nothing to do with mobile termination rates applicable to U.S.-originated calls. The Commission should be wary of being drawn into such matters.

Upon review of the record of this proceeding, the Commission should conclude that the rates charged by foreign mobile operators to terminate U.S.-originated calls on their networks do not present a problem requiring a regulatory response by the Commission. The Commission, however, should remain vigilant in ensuring that foreign mobile termination rates do not discriminate against U.S.-originated calls. To the extent that the Commission has concerns about the relationship between the rates charged by foreign mobile operators and U.S. carrier

surcharges, the Commission may wish to investigate whether reductions in mobile termination rates are being passed through to U.S. consumers by the U.S. carriers and their foreign correspondents.

**II. THE RECORD OF THIS PROCEEDING DEMONSTRATES THAT FOREIGN MOBILE TERMINATION RATES DO NOT REQUIRE A REGULATORY RESPONSE BY THE COMMISSION.**

**A. The Rates Charged by Foreign Mobile Operators to Terminate Calls on Their Networks Do Not Discriminate Against U.S.-Originated Calls.**

There is near universal agreement among the commenting parties that the rates charged by foreign mobile operators to terminate calls on their networks do not discriminate against U.S.-originated calls, in particular, or international calls, in general.<sup>2</sup> Indeed, as several commenting parties point out, such discrimination would be unlawful in many jurisdictions around the world,<sup>3</sup> and would be inconsistent with the obligations of WTO Members under the GATS Annex on Telecommunications and the WTO Reference Paper.<sup>4</sup>

Unable to identify any real discrimination, AT&T and MCI would nonetheless have the Commission conclude that foreign mobile termination rates discriminate against U.S.-originated

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<sup>2</sup> See, e.g., AHCJET Comments at 3; BellSouth Comments at 2-5, CTIA Comments at 2-3, 7-8; DoCoMo Comments at 2-3; GSME Comments at 8-9; Orange Comments at 8; Telefónica Comments at 3-4; Verizon Comments at 5-6; Vodafone Comments at 9-11, Annex D; WWI Comments at 2.

<sup>3</sup> See, e.g., BellSouth Comments at 4; Switzerland Comments at 2; Vodafone Comments at 9-10, Annex D (Australia, European Union, Japan, New Zealand). In this regard, DoCoMo notes that Article 34 of Japan's Telecommunications Business Law prohibits discriminatory interconnection tariffs. Japan Telecommunications Business Law, Law No. 86 of December 25, 1984, Chapter II, Section 3, Article 34(3)(vi).

<sup>4</sup> See CTIA Comments at 8 n.20 (citing General Agreement on Trade in Services, Annex on Telecommunications, § 5 (a) and *International Settlement Rates*, Report and Order, 12 FCC Rcd 19806, 19848-49 (1997)).

calls because fixed-line operators in other countries often have mobile affiliates.<sup>5</sup> They argue that such mobile affiliates can charge inflated – and, according to AT&T and MCI, discriminatory – mobile termination rates because such payments constitute intra-corporate transfers.<sup>6</sup> This argument, however, would have merit, if at all, only in countries where there is one fixed-line operator and one or more mobile operators that are wholly owned by the fixed-line operator. There are few, if any, such countries. “According to a recent survey by the International Telecommunications Union (‘ITU’), approximately 80 percent of countries have competitive or partially competitive mobile markets” (*i.e.*, two or more mobile operators).<sup>7</sup> In the European Union, “[a]lmost all of the 25 EU markets has at least three mobile network operators – and in many cases, more – resulting in high levels of competition.”<sup>8</sup> “In the eleven Latin American countries in which BellSouth had operations, all have at least two mobile competitors; eight have at least three; and Argentina has four.”<sup>9</sup> Japan also has a robustly competitive mobile market with four major operators.<sup>10</sup> In such markets, it would be

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<sup>5</sup> See AT&T Comments at 8-11, Attachment A; MCI Comments at 21-22. NII raises a similar argument with respect to its *domestic* operations in Peru. See NII Comments at 11. NII’s comments are more properly directed to the Peruvian regulator, OSIPTEL, than to the Commission, which plainly has no jurisdiction over *domestic* interconnection rates in Peru.

<sup>6</sup> AT&T Comments at 8; MCI Comments at 21. AT&T also argues that the fixed-line operator’s mobile affiliate will dictate mobile termination rates for competing mobile providers, if any. AT&T Comments at ii-iii. The record indicates otherwise. See Vodafone Comments at Annex B. As Vodafone points out, there are significant differences in the termination rates charged by mobile operators in countries in which fixed-line incumbents have mobile affiliates. See *id.*

<sup>7</sup> Verizon Comments at 3.

<sup>8</sup> Orange Comments at 4; see Telefónica Comments at 5-6; TI Comments at 2.

<sup>9</sup> BellSouth Comments at 5-6; see AHCIEET Comments at 4.

<sup>10</sup> These operators compete aggressively on the basis of service quality, innovative handsets and applications, as well as price. A recent survey conducted by the Ministry of Internal Affairs and Communications (MPHPT Press Release, August 31, 2004, at

economically irrational for any fixed-line operator to willingly pay inflated termination rates to competing mobile service providers.<sup>11</sup> AT&T's and MCI's discrimination claims are therefore without merit.

**B. The Interests of Foreign Fixed-Line Operators and Consumers Are Aligned With the Interests of U.S. Fixed-Line Operators and Consumers.**

There is also near universal agreement among the commenting parties that, because the rates charged by foreign mobile operators do not discriminate against U.S.-originated calls, the interests of foreign fixed-line operators and consumers are aligned with those of U.S. fixed-line operators and consumers.<sup>12</sup> This should not be surprising, as “[c]alls from American consumers to foreign mobiles represent less than 1 percent of all the calls terminated by foreign mobile networks, despite the rapid growth in absolute volumes from the United States.”<sup>13</sup> As a consequence, foreign carriers whose customers make calls to mobile phones have an incentive –

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[http://www.soumu.go.jp/joho\\_tsusin/eng/Releases/Telecommunications/news040831\\_1.html](http://www.soumu.go.jp/joho_tsusin/eng/Releases/Telecommunications/news040831_1.html)) indicates that, as a consequence of suitable economically attractive calling plans, mobile calls in Japan are competitive with, if not less expensive than, calls in selected European countries and the United States. Information to the contrary presented by Softbank BB Corporation (“Softbank”) is based on a survey that did not take into account suitable representative calling plans. See Softbank Comments at 4-5, Exhibit 1, Chart 2. Article 34 of Japan’s Telecommunications Business Law prohibits discriminatory interconnection tariffs.

<sup>11</sup> It would similarly be economically irrational for a fixed-line operator to pay inflated charges to a mobile affiliate in which it has less than a 100 percent ownership interest. In the case of DoCoMo, for example, less than 60 percent of its stock is owned by Nippon Telegraph and Telephone Corporation; the remaining shares are held by third parties (ownership information as of September 30, 2004).

<sup>12</sup> See, e.g., CANTO Comments at 3; GSME Comments at 8-9, Vodafone Comments at 9.

<sup>13</sup> Vodafone Comments at iii. “And U.S.-originated traffic terminating on *mobiles* in Europe amounted to only three percent of all international traffic terminating in Europe.” CTIA Comments at 4 n.9 (emphasis in original). WWI indicates that 97 percent of all traffic terminating on its mobile networks originates in Europe. See WWI Comments at 2. See also Verizon Comments at 6.

much more so than U.S. carriers – to ensure that the prices they pay for mobile termination are set at efficient cost-oriented levels.

**C. The Rates Charged by Foreign Mobile Operators to Terminate Calls on Their Networks Are Being Addressed by Foreign National Regulatory Authorities.**

Every party filing comments in this proceeding that discussed the issue agrees that national regulatory authorities in other countries are addressing the rates charged by mobile operators to terminate calls on their networks.<sup>14</sup> Indeed, AT&T, CompTel and MCI rely on, and often quote from, the decisions of foreign national regulatory authorities in support of their claims regarding the state of competition in foreign markets and the level of foreign mobile termination rates.<sup>15</sup> As DoCoMo and others have pointed out, this regulatory scrutiny of mobile termination rates is entirely understandable, given the high levels of mobile penetration in other countries,<sup>16</sup> the fact that the vast majority of traffic terminating on mobile networks in other countries is domestic in nature<sup>17</sup> and the record evidence that “over 95 percent of the costs of terminating traffic in foreign mobile networks have been borne and are likely to be continue to

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<sup>14</sup> See, e.g., BellSouth Comments at 12-13; CANTO Comments at 2; Digicel Comments at 4; GSMA Comments at 6-9; GSME Comments at 5-7; INTUG Comments at 5-7; Orange Comments at 4-6; Switzerland Comments at 2; Telefónica Comments at 4-5; TI Comments at 2-3, 7; Verizon Comments at 4-5; Vodafone Comments at 11-13, Annex B; WWI Comments at 3-8.

<sup>15</sup> See AT&T Comments at 12-15 (e.g., Australia, Belgium, European Commission, Finland, Greece, Hungary, Ireland, New Zealand, Sweden, UK); CompTel Comments at 2-5, 7-8 (e.g., Australia, European Commission, France, Malaysia, New Zealand, Sweden, UK); MCI Comments at 12, 14-15 (e.g., Belgium, European Commission, France, Ireland, Italy, Jamaica, Netherlands, Spain, Sweden, UK).

<sup>16</sup> See AT&T Comments at 6.

<sup>17</sup> See, e.g., CTIA Comments at 4 & n.9; DoCoMo Comments at 4; Verizon Comments at 4; WWI Comments at 2.

be borne by domestic fixed and mobile customers in those foreign countries.”<sup>18</sup>

Notwithstanding the foregoing and the fact that AT&T, CompTel and MCI rely on the decisions of foreign national regulatory authorities to support their views, they argue that the Commission cannot rely on these very same national regulatory authorities to faithfully carry out their domestic regulatory responsibilities.<sup>19</sup> In essence, the U.S. carriers are asking the Commission to find that foreign national regulatory authorities are either inept, indifferent to their statutory responsibilities and the needs of domestic consumers and fixed-line operators, or worse. Absent more compelling evidence than the carriers have presented, the Commission should be unwilling to reach such a conclusion.<sup>20</sup>

**D. The Rates Charged by Foreign Mobile Operators to Terminate Calls on Their Networks Are Declining.**

The record is replete with evidence that, as a result of marketplace forces and regulatory intervention, the rates charged by foreign mobile operators to terminate calls on their networks are declining.<sup>21</sup> In the face of this overwhelming evidence, AT&T and MCI make sweeping

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<sup>18</sup> Vodafone Comments at 9; *see* Verizon Comments at 4.

<sup>19</sup> AT&T appears to believe that such a conclusion is warranted because “[o]nly one country has reduced rates to the level shown by AT&T’s R-TCP study.” AT&T Comments at iv. AT&T’s confidence in the legitimacy of its R-TCP study – a confidence that is not shared by other parties – provides no basis for the Commission to conclude that foreign national regulatory authorities are not acting in good faith or in the interests of consumers and carriers in their home markets.

<sup>20</sup> As Digicel aptly notes, “it should not be assumed that, simply because a local regulator has chosen not to intervene in the matter [*i.e.*, mobile termination rates], there must be an outstanding problem requiring outside intervention.” Digicel Comments at 4.

<sup>21</sup> *See, e.g.*, AHCIEET Comments at 4; C&W Comments at 8; CANTO Comments at 1-2; CTIA Comments at 3-6; DoCoMo Comments at 4; GSME Comments at 7-8; Japan Comments at 1-2; Orange Comments 4; Switzerland Comments at 1-2; Telefónica Comments at 6-7; Verizon Comments at 2-3; Vodafone Comments at 11-13, Annex B.

statements that mobile termination rates are increasing.<sup>22</sup> In support of these claims, MCI can only point to increased mobile termination rates in two countries, Colombia and Nicaragua.<sup>23</sup> Plainly, rate increases in two countries do not justify a finding that foreign mobile termination rates are increasing.

As the Commission considers the U.S. carriers' claims about foreign mobile termination rates and the data provided by mobile operators and other parties, it should be mindful of the impact of the devaluation of the U.S. dollar vis-à-vis other currencies. Real declines in foreign mobile termination rates are often masked by changes in the exchange rates between the U.S. dollar and other currencies.<sup>24</sup>

**E. The Objections to Foreign Mobile Termination Rates Are, in Actuality, Objections to “Calling Party Pays” Regulatory Regimes.**

As noted above, claims that foreign mobile termination rates are increasing are demonstrably incorrect; mobile termination rates are, in fact, declining.<sup>25</sup> It may well be true, however, that the aggregate payments made by U.S. carriers for mobile termination are increasing, as AT&T, CompTel, MCI and Sprint claim.<sup>26</sup> This should not be a matter of

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<sup>22</sup> See AT&T Comments at 2-7; MCI Comments at 5-10.

<sup>23</sup> See MCI Comments at 8-9. AT&T and MCI also note the possibility that Mexico *may* adopt a calling party pays (“CPP”) regulatory regime. See *id.* at 9; AT&T Comments at 8.

<sup>24</sup> By way of illustration, on October 10, 2002, the date on which the Commission adopted the *Notice of Proposed Rulemaking* in which it first solicited comment on foreign mobile termination rates, the U.S. dollar was trading at € 1.0141, £ 0.64 and ¥ 123.64. On October 14, 2004, the date on which the Commission adopted the *Notice* in this proceeding, the U.S. dollar had declined by 20.4 percent vis-à-vis the Euro (€ 0.806907), 13 percent vis-à-vis Sterling (£ 0.556421) and 11.3 percent vis-à-vis the Yen (¥ 109.6). See <http://www.x-rates.com/calculator.html>.

<sup>25</sup> See note 21 *supra* and accompanying text.

<sup>26</sup> See, e.g., AT&T Comments at 1-5; CompTel Comments at 6-8; MCI Comments at 5-7; Sprint Comments at 2-7.

concern to the Commission if, as is the case, foreign mobile termination rates do not discriminate against U.S.-originated call and the aggregate payments made by U.S. carriers reflect an increase in the volume of calls to mobile phones in other countries (and, as is also likely the case, the decline in the value of the U.S. dollar vis-à-vis other currencies). Indeed, from the Commission's perspective, increased calling volumes and the ability of U.S. consumers to place calls to an increasing number of users around the world should be seen as a positive development.

Although AT&T, CompTel, MCI and Sprint complain about the level of foreign mobile termination rates, their underlying concern is the "dissonance" between calling party pays ("CPP") and receiving party pays ("RPP") pricing regimes.<sup>27</sup> As Sprint concedes:

*If all countries utilized CPP, high mobile termination rates would have little consequence for bilateral relationships between international carriers. International carriers in bilateral relationships in CPP countries having roughly even levels of originating traffic that is roughly symmetrical in terms of the break-out between mobile and fixed traffic will approach a net balance of zero in their accounting for this traffic, depending on the similarity of the termination rates charged by the mobile carriers in the respective countries. Often the mobile termination rates are much higher than the rates for fixed termination, but if the mobile rates and volumes in the respective countries combine at nearly the same levels, they will offset each other for the most part, with relatively small settlement payments passing through the bilateral relationship.*<sup>28</sup>

The choice of the most appropriate pricing framework for mobile services, however, is a decision that rests within the sound discretion of individual national regulatory authorities that should not be challenged by the Commission.<sup>29</sup> Just as other countries cannot require the United States to adopt a CPP pricing regime, the United States cannot compel other countries to adopt

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<sup>27</sup> Sprint Comments at 2; *see* MCI Comments at ii.

<sup>28</sup> Sprint Comments at 3-4 (emphasis added).

<sup>29</sup> *See Notice*, 19 FCC Rcd at 21400-01, ¶ 10; Digicel Comments at 3; Orange Comments at 7-8.

an RPP pricing framework. Moreover, as the Commission has recognized, there are benefits to both pricing models.<sup>30</sup> Accordingly, there is no “right answer” as to which system is more desirable. Even if there were, it is highly unlikely that the Commission could persuade the rest of the world to transition from CPP to RPP. Indeed, the trend appears to be moving in the opposite direction.<sup>31</sup>

Because of the differences between CPP and RPP pricing, no meaningful comparisons can be made between termination rates under the two systems.<sup>32</sup>

*RPP and CPP environments will produce a radically different structure of prices and volumes, even if the modelling assumes identical costs, identical demand conditions and normal profits in both cases.* This is simply because there are both substantial fixed costs in mobile businesses and substantial differences in the demand for subscription, for making calls to mobiles, for receiving calls on mobiles and for making calls from mobiles. Pricing structures in each case will therefore differ substantially, even if all other conditions are held constant. Broadly, RPP regimes will produce higher subscription charges, lower penetration, lower call charges and higher calling volumes. . . . CPP will produce lower subscription charges, higher penetration, higher calling charges and lower volumes.<sup>33</sup>

As a consequence, the comparisons between mobile termination rates in the United States and other countries put forward by AT&T and MCI prove little, other than that there are differences

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<sup>30</sup> See *Calling Party Pays Service Offering in The Commercial Radio Services*, Declaratory Ruling and Notice of Proposed Rulemaking, 14 FCC Rcd 10861 (1999), *aff'd and proceeding terminated*, 16 FCC Rcd 8297 (2001), *aff'd on recon.*, 17 FCC Rcd 1909 (2002).

<sup>31</sup> See Vodafone Comments at 14-15.

<sup>32</sup> See CTIA Comments at 9-10; GSMA Comments at 10; Orange Comments at 8; TI Comments at 4; Vodafone Comments at 13-15.

<sup>33</sup> Vodafone Comments at 14 (emphasis added). The widely recognized differences between CPP and RPP pricing regimes identified by Vodafone make it impossible to meaningfully compare mobile termination rates in Japan, a CPP jurisdiction, with those in the United States, an RPP jurisdiction. See Softbank Comments at 4-5. Softbank's minutes of use and ARPU comparisons similarly fail to take into account the impact of the differing circumstances of individual countries, such as varying levels of use of mobile data services. See *id.* at 5, Exhibit 5.

in pricing between CPP and RPP jurisdictions.<sup>34</sup> Such comparisons, standing alone, do not prove that foreign mobile termination rates are excessive or not cost-oriented.

### **III. THE COMMISSION HAS NEITHER THE JURISDICTION NOR THE RESOURCES TO ADDRESS THE RATES CHARGED BY FOREIGN MOBILE OPERATORS TO TERMINATE CALLS ON THEIR NETWORKS.**

As the record of this proceeding makes clear, the rates charged by foreign mobile operators to terminate calls on their networks do not present a problem requiring a regulatory response by the Commission. Unlike international settlement rates, the rates charged by foreign mobile operators to terminate calls are *domestic* charges imposed on *domestic* fixed-line and mobile carriers and *domestic* users in their home country. U.S. carriers typically do not stand in contractual privity with foreign mobile operators. Rather, U.S. carriers deliver calls to their foreign fixed-line correspondents which interconnect with the foreign mobile operator serving the called party. U.S. carriers therefore have no involvement in establishing foreign mobile termination rates.

As a consequence, and as DoCoMo, CTIA and others have pointed out, “[a]dopting regulations aimed at corralling mobile termination rates in foreign markets would exceed the limits of the Commission’s jurisdiction.”<sup>35</sup> Even if the Commission could be said to have

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<sup>34</sup> Similar differences exist with respect to the pricing of fixed-line services in the United States and the rest of the world. As the Commission has noted, “local landline telephone service is relatively more expensive abroad and that, in Europe and some Asian markets, consumers pay for local landline calls . . . on a per minute basis.” *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act*, Ninth Report, 19 FCC Rcd 20597, 20679 at ¶ 205 (2004). Without further analysis, these differences prove little.

<sup>35</sup> GSMA Comments at 2; *see id.* at 2-4; AHCIET Comments at 2-3; C&W Comments at 2-3; CANTO Comments at 2; CTIA Comments at 10 n.26; DoCoMo Comments at 5-6.

jurisdiction, the Commission should not exercise that jurisdiction for reasons of international comity.<sup>36</sup>

Wholly apart from the Commission's legal authority to address foreign mobile termination rates, the commenting parties have explained what an enormous and impractical undertaking it would be for the Commission to meaningfully analyze and evaluate mobile termination rates in over 160 countries, as would be required by the Administrative Procedures Act.<sup>37</sup> Simply stated, "[t]here is no administratively efficient way for the Commission to develop a cost model that adequately takes into account all of the complexities associated with mobile termination outside of the United States."<sup>38</sup> In this regard, Vodafone has identified nineteen

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<sup>36</sup> As the GSM Association has explained:

When considering whether to exercise jurisdiction in this matter, the Commission should consider, among other things, "the extent to which other states regulate such activities," "the extent to which another state may have an interest in regulating the activity," and "the likelihood of conflict with regulation by another state."

Each of these considerations should dissuade the Commission from imposing regulations that control FMTRs.

GSMA Comments at 5 (citing *Restatement (Third) of Foreign Relations Law of the United States* § 403(2) (1987)); see C&W Comments at 3; CTIA Comments at 7; DoCoMo Comments at 6. If AT&T's R-TCP approach were adopted, foreign mobile carriers would be in an untenable position. Complying with their domestic tariffs would put them at odds with the Commission; charging less than their tariffed rates for terminating U.S.-originated calls would put them at odds with their national regulatory authority and likely in violation of the nondiscrimination provisions of local law. International comity dictates that the Commission avoid such a result.

<sup>37</sup> See GSMA Comments at 13-14 (citing 5 U.S.C. § 551 *et seq.*); CANTO Comments at 3. As CTIA notes, foreign regulators have devoted enormous amounts of time and resources to mobile termination rates. "Absent a comparable commitment of Commission resources, it would be presumptuous for the Commission to assume that it can more effectively analyze such costs or set an appropriate rate or range of rates." CTIA Comments at 11.

<sup>38</sup> WWI Comments at 8; see BellSouth Comments at 18; CTIA Comments at 11-13; GSMA Comments at 13-14, GSME Comments at 6; Orange Comments at 3, 6-7.

factors that affect the cost of mobile termination in individual countries. These include such diverse factors as geographical terrain, population distribution, the type of technology used, the grade of service provided, wage rates and other employment costs, and the amount of spectrum licensed to each operator, to name but a few.<sup>39</sup> As a consequence, the Commission may wish to pursue its inquiry of mobile termination rates in multilateral fora such as Study Group 3 of the ITU-T, which is actively considering the issue.<sup>40</sup>

Benchmarking is not a solution. As BellSouth points out, benchmarking is useful only when the companies or countries being compared are very similar. In the case of mobile operators, benchmarking would require adjustments to reflect differences in teledensity, peak/off-peak traffic ratios, call duration, usage volume and input prices.<sup>41</sup> Although the Commission may be able to obtain mobile termination rates in other countries, “the adjustments required to obtain comparable rates are likely to be extremely complicated, limited by the availability of necessary data, and very costly to undertake.”<sup>42</sup>

Were the Commission to undertake such an analysis, it would also risk becoming mired in purely domestic disputes, as evidenced by the comments that have already been filed in this proceeding. NII, for example, has used this proceeding to air its grievances with Telefónica in Peru and its dissatisfaction with the decisions of the Peruvian regulator, OSIPTEL, with respect to *domestic* mobile termination rates. Although these parties have strained to draw a connection

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<sup>39</sup> See Vodafone Comments at 23-25. See also CTIA Comments at 11; Digicel Comments at 3-4.

<sup>40</sup> See Japan Comments at 1.

<sup>41</sup> See BellSouth Comments at 18-20 (citing Charles River Associates, *Economic Analysis of Fixed-to-Mobile Call Termination Charges* (March 28, 2003) (“CRA Study”) (Exhibit 2 to BellSouth Comments)). See also WWI Comments at 9.

<sup>42</sup> BellSouth Comments at 20 (citing *CRA Study* at 42-43); Orange Comments at 6-7.

with the mobile termination rates that are the subject of this inquiry, they have used this proceeding to raise issues that are being considered by their own national regulatory authorities.<sup>43</sup> Such unwanted efforts to involve the Commission in the domestic affairs of other countries are only likely to increase if the Commission undertakes a review of foreign mobile termination rates.

#### **IV. THE PARTIES HAVE IDENTIFIED ISSUES INVOLVING FOREIGN MOBILE TERMINATION RATES WHICH THE COMMISSION MAY WISH TO CONSIDER.**

None of the parties to this proceeding has suggested that the Commission has no role with respect to the rates which U.S. carriers pay to terminate calls on mobile networks in other countries. There is total agreement that the Commission has a legitimate interest in ensuring that foreign mobile termination rates do not discriminate against U.S.-originated calls.<sup>44</sup> As CTIA correctly observes, “[t]here is no reasonable basis for discriminatory mobile termination rates,” whether by a foreign mobile operator or as a “result of a mark-up by the foreign fixed-line operator or the U.S. IXC.”<sup>45</sup> The Commission should therefore continue to be vigilant in ensuring that U.S. consumers are not being forced to pay discriminatory mobile termination rates.

Other commenters also suggest that the Commission may wish to investigate whether U.S. carriers and their foreign fixed-line correspondents are flowing through to U.S. consumers the continuing reductions in foreign mobile termination rates.<sup>46</sup> The Commission plainly has a

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<sup>43</sup> See NII Comments at 4-8; Softbank Comments at 5-10.

<sup>44</sup> See BellSouth Comments at 21-22; DoCoMo Comments at 2-3; GSMA Comments at 15-16.

<sup>45</sup> CTIA Comments at 7.

<sup>46</sup> See AHCIET Comments at 5-7; C&W Comments at 11; CANTO Comments at 3; Digicel Comments at 2-3, Appendix; DoCoMo Comments at 7-9; GSMA Comments at 11; INTUG Comments at 2; Orange Comments at 8; Telefónica Comments at 8-9; Vodafone Comments at 31-35, Annex B.

legitimate interest in ensuring that U.S. consumers benefit from lower calling rates. Finally, a number of parties have suggested that the Commission consider ways to promote consumer education and awareness of foreign mobile termination rates.<sup>47</sup> These parties note that there is room for improvement on the part of U.S. carriers in this regard.

## **V. CONCLUSION**

As the record of this proceeding makes clear, the rates charged by foreign mobile operators to terminate calls on their networks do not require a regulatory response by the Commission. These rates do not discriminate against U.S.-originated calls; they are declining; and they are being scrutinized by foreign national regulatory authorities. Consistent with the limits of its jurisdiction and giving due consideration to international comity, the Commission should not assert jurisdiction over such rates. The Commission, however, has a legitimate

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<sup>47</sup> See AHCIET Comments at 6; C&W Comments at 10-11; Orange Comments at 8; Verizon Comments at 6-7.

interest in ensuring that foreign mobile termination rates do not discriminate against U.S.-  
originated calls and that U.S. consumers benefit from the continuing reduction of such rates.

Respectfully submitted,

**NTT DOCOMO, INC.**

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## Appendix

### List of Abbreviations of Parties Filing Comments in IB Docket No. 04-398

AHCIET	Asociacion Hispanoamericana de Centros de Investigación y Empresas de Telecomunicaciones
AT&T	AT&T Corp.
BellSouth	BellSouth Corporation
C&W	Cable & Wireless PLC
CANTO	Caribbean Association of National Telecommunications Organizations
CompTel	CompTel/ASCENT
CTIA	CTIA – The Wireless Association
Digicel	Digicel USA Inc.
DoCoMo	NTT DoCoMo, Inc.
GSMA	GSM Association
GSME	GSM Europe
INTUG	International Telecommunications Users Group
Japan	Government of Japan
MCI	MCI, Inc.
NII	NII Holdings, Inc.
Orange	Orange SA
Softbank	Softbank BB Corporation
Sprint	Sprint Corporation
Switzerland	Swiss Federal Office for Communications
Telefónica	Telefónica S.A
TI	Telecom Italia Group
Verizon	Verizon
Vodafone	Vodafone
WWI	Western Wireless International Corporation

## CERTIFICATE OF SERVICE

I, Mark D. Johnson, hereby certify that on this 14th day of February 2005, I caused copies of the "Reply Comments of NTT DoCoMo, Inc." to be delivered to the following entities and persons by first-class mail, postage prepaid:

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