

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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COMMUNICATION FROM THE UNITED STATES

ANNEX

ACCESS TO AND USE OF SERVICES OF
PUBLIC TELECOMMUNICATIONS TRANSPORT SERVICES

The attached communication is circulated at the request of the Delegation of the United States to the members of the Group of Negotiations on Services.

Explanatory Note

The proposed Annex that follows is based on the U.S. proposed Services Framework Agreement of October 1989 (MTN.GNS/W/75) which includes undertakings relating to national treatment, market access, and transparency of regulation with respect to covered services. Any changes to the text of that Agreement may lead to corresponding changes in this Annex.

This proposed Annex would obligate Parties to grant access to and use of public telecommunications transport services, as defined in the text, for the conduct of business including intracorporate communications and the provision of services covered by the Framework Agreement.

However, this proposed Annex does not determine the obligations of Parties concerning the opening of any telecommunications transport service to competition.

Those obligations will be determined by the coverage mechanism in the Framework Agreement which is agreed to by the Parties.

In order for this proposed Annex to address coverage of competitively-provided services that would be considered "basic" in the United States, it would be necessary to modify the language of the Annex or to write new provisions.

ANNEX
ACCESS TO AND USE OF SERVICES OF
PUBLIC TELECOMMUNICATIONS TRANSPORT NETWORKS

Article 1

Purpose

This Annex elaborates upon the Agreement on Trade in Services (hereafter referred to as the "Framework Agreement") as it applies to access to and use of "services of public telecommunications transport networks" (hereafter referred to as "public telecommunications transport services").

Article 2

Scope and Definitions

2.1 This Annex applies to any existing or new measure of a Party that relates to access to public telecommunications transport services, whether or not covered by the Framework Agreement, and the use of such services for the conduct of business, including intracorporate communications and the provision of a covered service.

2.1.1 The term "public," when used in connection with "telecommunications transport services," refers to such services offered on a common-carrier basis, whether provided by a governmental or private entity; that is, when such services are offered to the public generally or are required by a Party to be offered to the public generally.

2.1.2 The term "telecommunications transport service," as used in this Annex, refers to telecommunications services that are limited to the real-time transmission of customer-supplied information between two or more points, including only such switching, signaling, processing, storage of information, or protocol conversion as is necessary for real-time transmission without any end-to-end change in the form, content, or protocol of the customer's information. ##Ft 1

2.1.3 The term "telecommunications," as used in this Annex, refers to the electromagnetic transmission and reception of information by any means. The term shall not include the cable or broadcast distribution of mass-audience radio or television programming.

2.1.4 The term "customer," as used in this Annex, shall also include any users authorized by the customer.

2.2 Nothing in this Annex shall be construed:

- 2.2.1 to require a Party to authorize a person of another Party to establish, construct, acquire, lease, or operate telecommunications transport facilities or to authorize such person to provide telecommunications transport services within or into its territory; provided that this requirement shall not be construed to nullify the obligations of a Party under Article 3 of this Annex to permit access to and use of public telecommunications transport services;
- 2.2.2 to prevent a Party from maintaining, authorizing, or designating exclusive or monopoly providers for the provision of public telecommunications transport services, subject to Article 10.3 of the Framework Agreement;
- 2.2.3 to require a Party (or providers of public telecommunications transport services operated by a Party or under its jurisdiction):
 - 2.2.3.1 to offer a particular public telecommunications transport service not offered on the date of entry into force of the Framework Agreement, except that new public telecommunications transport services introduced after that date will be subject to the obligations of this Annex, or
 - 2.2.3.2 to construct or acquire telecommunications transport facilities not in existence on that date;
- 2.2.4 to prevent a Party from allowing a provider of public telecommunications transport services to charge a customer the reasonable costs of special construction undertaken to meet a request by that customer for access to such services;
- 2.2.5 to imply that intracorporate communications are or are not traded; references herein to such communications indicate only their importance to the facilitation of trade in goods and services.

Article 3

Access to and Use of Public Telecommunications Transport Services

3.1 Each Party, in accordance with this Article, shall permit customers of any Party to have access to and use of all public telecommunications transport services offered within or into the

territory of the Party on the date of entry into force of the Framework Agreement, or that may be offered thereafter.

3.2 No Party shall establish or maintain any measure inconsistent with the obligations of this Article.

3.3 Whenever a Party designates or maintains exclusive or monopoly providers of public telecommunications transport services, whether or not such services are covered by the Framework Agreement, the Party shall require the entity or entities enjoying such privileges to provide customers of any Party access to and use of all public telecommunications transport services that such entities offer on the date of entry into force of the Framework Agreement or that they may introduce thereafter.

3.3.1 Whenever the monopoly or exclusive service providers referred to in Article 3.3, either directly or through an affiliate, provide a covered service, the monopoly or exclusive service providers shall provide public telecommunications transport services to a non-affiliated customer that offers the same or a similar covered service at the same rates and on the same terms and conditions as it provides the public telecommunications transport service to itself or its affiliate.

3.4 For purposes of this Annex, the terms "monopoly provider" and "exclusive providers" are defined in Article 10.4 of the Framework Agreement and, for purposes of this Article, these terms shall also include providers of public telecommunications transport services that are established or maintained by a Party as monopoly or exclusive providers through measures other than express designation.

3.5 "Access to public telecommunications transport services" means the ability of a customer of any Party to subscribe on reasonable and nondiscriminatory rates, terms, and conditions to any such service offered within or into the territory of the Party.

3.5.1 Providers of public telecommunications transport services shall make leased circuits available to such customers at cost-based, flat-rate prices. In addition to offering leased circuits at such prices, providers may also offer leased circuits priced on other bases that meet the general obligations of Article 3.5.

3.5.2 Parties shall ensure that the pricing of public telecommunications transport services does not have the intent or effect of nullifying or

impairing the access to and use of public telecommunications transport services required by this Annex.

3.6 "Use of public telecommunications transport services" means the ability of a customer of any Party to use services obtained in accordance with Article 3 for the conduct of business within or into the territory of a Party, including intracorporate communications and the provision of a covered service. Use of such services includes, but is not limited to, the activities described in the following provisions, except where such use would result in the provision by a customer of a public telecommunications transport service:

- 3.6.1 The resale or sharing of such public telecommunications transport services;
- 3.6.2 The purchase or lease and attachment of customer premises equipment, including such equipment as is necessary to perform the functions referred to in Article 3.6.5 below, so long as such attachment causes no technical harm to a public telecommunications transport network;
- 3.6.3 The interconnection of leased circuits with other leased circuits operated by the same customer, or with leased circuits operated by another customer;
- 3.6.4 The interconnection referred to in Article 3.6.3 effected on such terms and conditions as may be mutually negotiated and agreed to by such customers;
- 3.6.5 The performance of switching, signaling, and processing functions in connection with interconnected leased circuits referred to in Articles 3.6.3 and 3.6.4;
- 3.6.6 The interconnection, on reasonable and nondiscriminatory terms, of leased circuits with public, switched telecommunications transport networks, including for the purpose of dial-up access to and from such public, switched networks; and
- 3.6.7 The movement, storage, and processing of information by a person within and across the borders of the Party.

3.7 A Party shall not impose, or permit an exclusive or monopoly provider of a public telecommunications transport service to impose, on a customer of any Party, as a condition of access to or use of a public telecommunications transport service, any

obligation requiring such customer to:

- 3.7.1 Provide any service to any other person(s);
- 3.7.2 Interconnect leased circuits operated by such customer with leased circuits operated by any other customer or with a public, switched network operated by a provider of public telecommunications transport services;
- 3.7.3 Use any mandatory or designated standards or protocols, except as such standards and protocols establish interfaces to public, switched telecommunications transport networks, or as may be required to prevent technical harm to a public telecommunications transport network; and
- 3.7.4 Obtain a license or comply with a registration procedure the intent or effect of which would be to nullify or impair benefits derived from the Party's obligations under this Annex or the Framework Agreement.

3.8 The obligation of the Party to permit access to and use of public telecommunications transport services imposed by this Article applies only to customers of Parties but applies whether or not such customer requesting access and use is located within the territory of that Party.

Article 4

Transparency

Each Party shall adhere to the provisions of Article 12 of the Framework Agreement also with respect to measures of a Party relating to access to and use of public telecommunications transport services.

[Article 5

[Possible further elaboration of the proposed U.S. Framework Agreement concerning the applicability of selected articles, e.g., Articles 7, 10, 11, 16, 18, 19, to access to and use of public telecommunications transport services.]

Foot Note 1

N.B. The above definition would exclude, inter alia, (1) closed user groups; (2) a service package combining simple telecommunications transport service with other services that would not be so classified; or (3) any service combining telecommunications transport and the storage of information or protocol conversion going beyond that which is necessary for simple transmission in real time.