|  |  |
| --- | --- |
| **Expert Group on the International Telecommunication Regulations (EG-ITRs)** |  |
| **First meeting – Geneva, 9-10 February 2017**  |  |
|  |  |
|  | **Document EG-ITRs 1/2-E** |
| **19 January 2017** |
| **Original: English**  |
| **United States of America** |
| United States Views on the Review of the International Telecommunication Regulations  |

**Introduction**

The United States is pleased to participate in the review of the International Telecommunication Regulations (ITRs) by the Expert Group on the International Telecommunication Regulations (EG-ITRs). Pursuant to the Terms of Reference of the EG-ITRs,[[1]](#footnote-1) we present our views on the three issues that are essential to the review of the ITRs: (1) applicability of the 2012 ITRs in a rapidly evolving international telecommunication environment; (2) legal analysis of the 2012 ITRs; and (3) analysis of any potential conflicts between the obligations of signatories to the 2012 ITRs and signatories to the 1988 ITRs with respect to the implementation of the provisions of the 1988 and the 2012 ITRs.

1. **Applicability of the ITRs**

The United States believes the ITRs are no longer applicable or relevant to the vast majority of international communications traffic. The ITRs replaced an earlier international framework that had promoted mutual agreement between Member States (and, where relevant, their state-owned monopolies) to exchange, terminate, and settle international telephone traffic. The ITRs in the monopoly era were essential to the provision and operation of international telecommunication services. The absence of such regulations in an environment dominated by monopoly providers with market power could have resulted in poor interconnection, higher settlement charges, and poor quality of service.

The monopoly environment has disappeared, along with the rationale for a treaty addressing its potential effects on international telecommunications services. In the last two decades, international and domestic telecommunication markets have experienced extraordinary structural and technological changes. Competitive telecommunications networks and provision of telecommunication services have thrived in most telecommunications markets. According to the ITU a clear majority of countries in all six ITU regions have competitive markets covering elements that are essential to the provision international telecommunication services - domestic fixed long-distance, mobile, leased lines and international gateways. For example, according to ITU’s 2015 ICTEYE, a majority of countries have various levels of competitive markets in domestic and international long distance services and more than 75% of ITU Member States have competitive international gateways and leased line markets. The ITU also reports that the emergence of the mobile market, which has become the primary mode of communications, is even more competitive, with 92% of countries reporting either a competitive or partially competitive market.

The United States believes that the ITRs are neither required nor desirable in this competitive international telecommunication environment. The presence of competition in a majority of countries means that most international telecommunication traffic is exchanged and terminated via competitive interconnection agreements, rather than through mutual agreements established through the ITR framework.

For example, the United States Federal Communications Commissions reported that in 2012 – the latest year for which data is available - 0.5% of international telecommunications traffic between the United States and foreign points was settled under legacy ITR accounting rate provisions, compared to 86% of such traffic in 1998. This is despite the fact that during that same time period total billed minutes for international calls in the United States grew from 24.2 billion minutes to 77.9 billion minutes or at a compound annual growth rate of 9.4%. As a result, the ITRs are effectively irrelevant to international telecommunications traffic as the volume of such traffic being settled outside the accounting rate system increasingly dwarfs, and eventually will replace completely, the traffic being settled under that system.

1. **Legal Analysis of the ITRs**

In its statement during the 2012 World Conference on International Telecommunications (WCIT), the United States expressed several serious concerns about the scope and applicability of the 2012 ITRs. In particular, we noted our concern that some of the provisions are outside the stated purpose and scope of the ITRs as articulated in Article 1 of both the 1988 and 2012 ITRs.[[2]](#footnote-2) The United States continues to have these concerns.

1. **Potential Conflicts between the 1988 and the 2012 ITRs**

We do not foresee any potential legal conflicts between the 1988 and the 2012 ITRs. The ITU has confirmed that it views the 1988 ITRs as governing the bilateral telecommunication relationship between Member States where at least one such Member State is not a party to the 2012 ITRs. *See* <http://www.itu.int/en/wcit-12/Pages/treaties-signing.aspx> (“[r]elations between a non-party to the 2012 treaty and a party to the 2012 treaty are governed by the 1988 treaty”).

With respect to whether there will be any practical conflicts arising from the fact that the 1988 ITRs will apply in some relations between ITU Member States and the 2012 version in others, we note that it may be too early to make such a judgment. The 2012 ITRs only entered into force two years ago (January 1, 2015) for its earliest adopters. We would be interested, though, to learn about specific conflicts Member States have experienced and which provisions gave rise to those conflicts.

**Conclusion**

Considering that a significant majority of Member States have competitive markets for domestic and international telecommunications markets, the United States is of the view that the ITRs are no longer necessary and we also note that the ITU Constitution and Convention already contain provisions on cooperation in the provision of international telecommunication services.

1. *See* Council Resolution 1379, Doc. C/16/125 (1 June 2016), ANNEX 1. [↑](#footnote-ref-1)
2. For an explanation of the United States interpretation of the 2012 ITRs, see the United States statement in the Minutes of the 14th Plenary Meeting, December 13, 2012, Dubai 2012. [↑](#footnote-ref-2)