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| VIEWS ON THE PROVISION BY PROVISION REVIEW OF THE 2012 INTERNATIONAL TELECOMMUNICATION REGULATIONS |

**Introduction**

Pursuant to the Work Plan agreed to at the September meeting of the Expert Group on the International Telecommunication Regulations (EG-ITRs), Australia, Canada, and the United States are pleased to offer their views on the Preamble and Articles 1 through 4 of the 2012 ITRs. We believe most of the detailed provisions in the 2012 ITR are neither applicable to nor practical in today’s communications environment. Any attempt to revise the 2012 ITRs to address existing economic conditions and emerging technologies and services will meet the same fate as the current provisions – because of the rapidly changing market and regulatory environment, detailed treaty provisions will perpetually be obsolete.

**Discussion**

In an earlier contribution, we highlighted the fundamental problems with the use of a treaty instrument to attempt to regulate a competitive and dynamic marketplace. We reiterate that perspective for purposes of the present exercise to review the Preamble and Articles 1 through 4. We believe the 2012 ITR provisions contained in Articles 2 through 4 are not flexible enough to withstand constant changes in the market and will continually face obsolescence.

Advances in mobile technology, the transition from the public switched telephone network (PSTN) to Internet Protocol (IP) based networks, competitive markets, operators with new business arrangements and new regulatory regimes have fundamentally altered the need to rely on the 2012 ITRs provisions to exchange and terminate international telephone traffic. For example, operators and service providers that exclusively rely on mobile communication applications for international calls seldom use prearranged fixed *international routes*, do not have direct *relationships* with international operators, and employ business arrangements other than the *accounting rates* to exchange and terminate international calls, as those terms are defined in Article 2. According to one estimate, the share of international voice traffic terminated by operators and service providers relying on mobile applications was expected to increase from 28% in 2013 to 68% in 2018. During the same time period, the volume of international voice traffic was expected to grow from 761 billion minutes in 2013 to 1.40 trillion minutes in 2018 indicating vastly improved international connectivity and use of telecommunication services.[[1]](#footnote-1)

In our view, many of the provisions in Article 3 are also fundamentally incompatible with a competitive market and regulatory environment, as well as ongoing technological advances. For instance, provision 3.2 on sufficient capacity seems hopelessly outdated, as it was designed for an era when ITU-T “Plan Committees” provided traffic forecasts for different routes.[[2]](#footnote-2) In a competitive market where operators plan and forecast their own traffic, it is not clear the Article 3 requirement for operators to maintain sufficient capacity on every route they serve is necessary or beneficial. It is more likely that the operators would turn to a Spot Market for international calls to buy minutes to satisfy any excess demand or sell minutes when they have or excess capacity (minutes) – both more efficient market responses than maintaining sufficient capacity on every route.[[3]](#footnote-3)

Some provisions, though well intended, are excessively narrow to accommodate the changing market environment and, when strictly enforced, may deter the introduction of new services essential to improving affordability and consumer choice. For example, provisions 3.1 and 3.4 on ensuring the quality of service in international networks are specifically tied to ITU-T Recommendations on quality of service. By requiring that operators meet a specific quality of service, these provisions could limit the ability of operators to respond to consumer preferences for new services that may offer lower prices in exchange for lower quality of service. The availability of an array of international call plans with varying quality of service in countries around the world attests to the lack of relevancy and practicality of the 2012 ITRs provisions.

**Conclusion**

The Telecommunication/ICT sector continues to contribute to economic growth worldwide. In 2016 revenues from telecommunications sector represented 2.3% of the Gross Domestic Product (GDP) worldwide.[[4]](#footnote-4) New services, in particular, mobile applications fueling the growth in telecommunication sector, were neither envisioned nor facilitated by the rigid provisions of the 2012 ITRs. We believe the benefits of telecommunication/ICTs experienced by countries worldwide is not because of the 2012 ITRs, but despite this treaty instrument.

Treaty provisions that are general in nature, in contrast, are more likely to withstand changing market conditions and technological innovation. We believe more general provisions of the ITRs included in the ITU Constitution and Convention are resilient and capable of enduring changing market and technological environment.[[5]](#footnote-5)

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1. See Telegeography at <https://blog.telegeography.com/voice-traffics-slump-continued-in-a-big-way-last-year>. [↑](#footnote-ref-1)
2. See Expert Group to Review the ITRs (2007 – 2009), Information Document 4 on Review of the International Telecommunication Regulations available at <https://www.itu.int/md/T05-ITR.EG-INF-0004/en>. [↑](#footnote-ref-2)
3. See Federal Communications Commission, Filing Manual for Section 43.62 Annual Reports (February 2016) available at <https://www.fcc.gov/document/filing-manual-section-4362-annual-reports-february-2016> for a description of Spot Market. [↑](#footnote-ref-3)
4. ITU, Measuring the Information Society Report 2018, Volume 1, page 57. [↑](#footnote-ref-4)
5. See Expert Group to Review the ITRs (2007 – 2009), Information Document 5 on Relation between the ITRs and Constitution and Convention available at <https://www.itu.int/md/T05-ITR.EG-INF-0005/en>. [↑](#footnote-ref-5)