



January 27, 2004

Gloria Blue
Executive Secretary
Trade Policy Staff Committee
ATTN: Section 1377 Comments
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

**RE: CompTel/ASCENT Alliance Section 1377 Additional
Comments:**

France, Guatemala, El Salvador, Venezuela, and New Zealand:
WTO General Agreement on Trade in Services

Guatemala and El Salvador: *Central American Free Trade
Agreement ("CAFTA")*

Dear Ms. Blue:

Pursuant to Section 1377 of the Omnibus Trade and Competitiveness Act of 1988, 19 U.S.C. § 3106 ("Section 1377"), the CompTel/ASCENT Alliance hereby provides additional comments in response to the request of the Office of the United States Trade Representative ("USTR") for comments regarding compliance with certain telecommunications trade agreements.

On January 7, CompTel/ASCENT submitted comments to the USTR warning that 12 key trading partners – Austria, Australia, China, France, Germany, India, Japan, Mexico, Peru, Singapore, South Africa, and Switzerland – are not honoring their market-opening obligations under the *World Trade Organization* ("WTO") *General Agreement on Trade in Services* ("GATS"), *Basic Telecommunications Agreement* and *Reference Paper*, and related agreements. In these additional comments, CompTel/ASCENT additionally identifies Guatemala, El Salvador, Venezuela, and New Zealand as vital trading partners that are not honoring their obligations under the above-mentioned WTO agreements, and comments on the developments in France. The difficulties described below with respect to Guatemala and El Salvador are particularly disturbing because they call in to question the ability of those countries to live up to the higher level of

obligations which they will assume under the Central American Free Trade Agreement (“CAFTA”), which was recently concluded.

FRANCE

In the Alliance’s Section 1377 Comments, CompTel/ASCENT raised concerns regarding the failure of France to comply with its WTO commitments.

There has been a troubling development in France since CompTel/ASCENT filed its Comments on January 7th. Specifically, on or about January 8, the French National Assembly voted in favor of a series of measures, with the full support of the French Government, which are highly favorable to state-owned France Telecom and which would harm competition in France. The first measure limits the power and independence of the French regulator, Autorité de Régulation des Télécommunications (“ART”), by severely circumscribing the ART’s authority to regulate France Telecom’s prices. This appears to be a violation of France’s WTO obligations to establish an independent regulator and ensure cost-oriented interconnection to major suppliers such as France Telecom, as well as a violation of relevant EU directives, including the new regulatory framework for electronic communications. Adoption of these measures is particularly alarming just weeks after the EU Commission opened a formal investigation into state aid to France Telecom.

In sum, we urge USTR to closely monitor the legislative situation in France and take any necessary action to ensure that France lives up to its WTO commitments.

GUATEMALA

Significant problems have developed in the Guatemala market since Telefonos de Mexico S.A. de C.V. (“Telmex”) purchased a majority interest in the incumbent fixed network operator, Telecomunicaciones de Guatemala S.A. (“Telgua”). Using techniques employed to frustrate competition in the Mexican market, Telgua, and its subsidiary, mobile PCS network operator, Sercom, have been taking advantage of their dominant position in the market to the detriment of new entrants. The Government of Guatemala and the Guatemalan regulator, Superintendencia de Telecomunicaciones de Guatemala (“SIT”) have not taken the steps necessary to prevent the anti-competitive conduct described below, in violation of Guatemala’s obligations under the GATS *Annex on Telecommunications* and the *Reference Paper*.

Guatemala made significant market access commitments as part of the *Basic Telecommunications Agreement*. Its Schedule of Specific Commitments lists no market access or national treatment limitations, other than the need to provide international traffic through the facilities of a licensed enterprise. In fact, Guatemala has licensed a number of facilities-based carriers to compete with Telgua.

In addition, Guatemala incorporated in its Schedule of Specific Commitments the *Reference Paper*, with the deletion of two very important words with respect to interconnection – “cost-oriented” and “reasonable.” Even as modified, however, Guatemala is not living up to its interconnection obligations or to other *Reference Paper* obligations.

It is important to note that Guatemala has agreed to enter into a free trade agreement with the United States and other Central American countries (“CAFTA”), which will include enhanced regulatory obligations with respect to telecommunications services. The violations noted below call into question Guatemala’s ability to comply with the obligations that it will undertake once CAFTA comes into effect.

WTO VIOLATIONS – *Reference Paper*

Lack of Pro-Competitive Regulation/Competitive Safeguards: Guatemala must implement measures that will prevent major suppliers from engaging in anti-competitive practices, as committed to in Section 1 of the *Reference Paper*. Telgua and its mobile service subsidiary have market power in local, domestic and international long distance, fixed line services and mobile services. Neither the Government of Guatemala nor SIT have put into place measures needed to protect competition. There is no antimonopoly law, no rules requiring structural or accounting separation for a major supplier, and no safeguards in place to prevent anti-competitive pricing practices. For example, SIT does not regulate tariffs for lease of facilities or any network element, creating a barrier for carriers who do not own capacity on a specific route and must lease that capacity from Telgua at whatever rate Telgua decides to charge.

The Government of Guatemala and SIT have also failed to end a long-standing anti-competitive agreement among the incumbents of Central American countries – Guatemala (Telgua), Honduras (Hondutel), El Salvador (CTE Telecom), Nicaragua (ENTEL) and Costa Rica (ICE) – when traffic sent to and from the Central American countries was relatively balanced.¹ This agreement includes a “sender keeps all” provision, allowing the incumbent in each country to terminate traffic on the network of the other incumbents without charge.

As a result of this agreement, Telgua can charge its customers lower call termination prices than the new entrants because the new entrants must pay termination charges to the other Central American incumbents (while Telgua pays nothing). As an example, Telgua offers termination prices to its customers calling Honduras at approximately US\$0.09, while other carriers not participating in such an agreement are offered wholesale termination prices in Honduras as low as US\$0.23 to 0.25. Telgua generally drops its prices after a customer changes its service provider to a different carrier, in order to recover the customer.

¹ The problems caused by this agreement obviously exist in the other Central American countries that are party to the agreement.

The anti-competitive nature of this agreement is compounded, because it also causes new entrants to lose revenue they might otherwise receive. For example, Hondutel will always send its Guatemala-bound traffic to Telgua, because it does not need to pay Telgua a termination charge, whereas Hondutel would need to pay a competitive carrier in Guatemala a termination charge. The Government of Guatemala should take action now to remove the anti-competitive effects caused by this agreement.

Failure to Ensure Interconnection: Guatemala has an obligation under the *Reference Paper* to cause Telgua to provide interconnection on “non-discriminatory terms, conditions and rates and of a quality no less favorable” than that provided for its own like services or for like services of its affiliates or subsidiaries. Interconnection must be “timely” and “sufficiently unbundled.” As important, the regulator must resolve disputes related to the inability of a new entrant to reach agreement with the incumbent on “access to essential resources.” Guatemala has failed to live up to these obligations.

SIT has not issued regulations requiring unbundled network elements. While SIT requires that Telgua provide interconnection, the regulations do not require that prices or other terms and conditions be non-discriminatory. Telgua discriminates in favor of its affiliates and subsidiaries in provisioning of local leased lines and in delivery of ports, contrary to Telgua’s obligation in the standard interconnection agreement. Telgua also discriminates in its charges between local and international calls, with international termination charges much higher than local termination charges. These forms of discrimination and the continued delays in provisioning and delivery of unbundled elements substantially affect carriers’ operations, interconnection rights and, ultimately, their ability to compete with Telgua.

SIT has refused to resolve these interconnection disputes between new entrants and Telgua, in violation of its obligation to do so under the *Reference Paper*. SIT has not responded to requests to intervene. Moreover, even when SIT does act, all major decisions which it has taken have been challenged by Telgua in court. This is contrary to the *Reference Paper*, ¶ 2.5, which says that appeals for review of SIT decisions “shall be settled by the Ministry of Communications, Transport and Public Works in the first instance.” In fact, the effect of any appeal of an SIT decision to the civil courts in Guatemala is to delay resolution of the dispute for years, thus allowing Telgua to continue to pre-empt competition in the Guatemalan market.

Lack of Independent Regulator: SIT is an independent body, but its decisions and procedures do not appear to be impartial. SIT does not initiate actions to prevent anti-competitive action by Telgua and is slow to respond, if at all, to requests from competitive carriers to act against Telgua. By failing to act, SIT effectively favors Telgua and allows it to continue to abuse its dominant position in the market to the detriment of other carriers.

Fixed-to-Mobile Price Squeeze: Mobile Virtual Private Network (“MVPN”): In its January 7 comments relating to Germany, CompTel/ASCENT described the anti-

competitive nature of MVPN offerings. The same problem exists in Guatemala and, like Germany, neither the Government nor SIT have enacted appropriate measures to prevent such anti-competitive conduct. As with Germany, CompTel/ASCENT believes this failure to act is a violation of ¶ 1 of the *Reference Paper*.

WTO VIOLATIONS – GATS *Annex on Telecommunications*

Discriminatory and Unreasonable Terms and Conditions for Access to the Public Switched Network: Guatemala has an obligation under the GATS *Telecommunications Annex*, ¶ 5(a), to allow access to and use of public telecommunications networks and services “on reasonable and non-discriminatory terms and conditions, for the supply of a service listed in its Schedule.” Telgua’s network – and that of its mobile subsidiary – constitute “public telecommunications networks and services” for purposes of the GATS *Telecommunications Annex*. As noted above, Guatemala’s Schedule of Specific Commitments provides almost unlimited market access for basic telecommunications services. The suppliers of these basic telecommunications services are entitled to the protections offered by the GATS *Telecommunications Annex* in terms of access to Telgua’s networks and services.

There are numerous ways in which Guatemala fails to provide the required access. Guatemala has not enforced its regulations requiring Telgua to offer a billing and collection service to its competitors under non-discriminatory terms and conditions. Telgua has refused either to provide such requested services or to disclose the terms and conditions under which it provides such services to its affiliates. In addition, Telgua charges end users for the use of another carrier’s carrier interexchange code (“CIC”) for long distance calling. Because carriers also pay an interconnection charge to Telgua, Telgua is charging twice for the same service (once to the end user and once to the carrier) affecting competition in the long distance market. Moreover, it is not possible for the customers of competitive carriers to use those carriers’ CIC on mobile phones.

On a regular basis, Telgua blocks access to the network for calls from customers of the other carriers. Sometime, it delays the use of the network by blocking access to local, 800 and 900 numbers assigned to the other carriers.

Paragraph 5(a) of the GATS *Telecommunications Annex* requires that access be on “reasonable” terms and conditions. Thus, even though Guatemala has not included an obligation to provide “cost-oriented” interconnection, the GATS *Telecommunications Annex* requires interconnection prices to be “reasonable,” since those prices are one of the fundamental terms of “access” to the network. As noted above, international termination charges are many times higher than termination charges for local calls. Since there is no technical reason for the price differences, the higher rates for international calls is “unreasonable” and a violation of the GATS *Telecommunications Annex*. In addition, the failure to require Telgua to provide unbundled network elements means that access to the network is not on “reasonable” terms and conditions. In this and other ways, Telgua prevents its competitors from using its network, thus preserving its monopoly control and

preventing Guatemalan consumers from reaping the benefits of a fully competitive telecommunications marketplace.

EL SALVADOR

El Salvador was one of the leaders of the WTO basic telecommunications negotiations, committing to a completely open market for telecommunications services and adopting the *Reference Paper* in full. The regulator, Superintendencia General de Electricidad y Telecomunicaciones (“SIGET”) has been active in promoting a competitive environment for new entrants. Unfortunately, the situation in El Salvador is changing dramatically for the worse. A majority interest in CTE Telecom, the incumbent fixed line carrier, was recently acquired by América Móvil, an affiliate of Telmex. As a result, competitive carriers are beginning to experience problems similar to those existing in Guatemala.

Like Guatemala, El Salvador has agreed to enter into CAFTA. Given the emerging problems described below, it is questionable whether El Salvador will be able to live up to its CAFTA obligations.

WTO VIOLATIONS – *Reference Paper*

Lack of Competitive Safeguards: Existing interconnection agreements between CTE Telecom and its competitors basically comply with *Reference Paper* obligations. CTE Telecom, however, is using its dominant position in the market to renegotiate the existing agreements to make the terms more favorable to CTE Telecom. CTE Telecom is insisting that competitive carriers pre-pay CTE Telecom and its mobile subsidiary for services. CTE Telecom is also trying to eliminate the provision in interconnection agreements that prohibits CTE Telecom from charging end users a fee for access to competitive carrier services at the same time as the competitive carriers pay CTE Telecom access charges.

El Salvador has no measures in place that would prevent CTE Telecom from undertaking these anti-competitive actions as required by Paragraph 1 of the *Reference Paper*. At this point, SIGET, has not taken any steps to force CTE Telecom to abide by its existing interconnection agreements.

WTO VIOLATIONS – *GATS Telecommunications Annex and Reference Paper*

Discriminatory and Unreasonable Terms and Conditions for Access to the Public Switched Network and Above-cost Interconnection: El Salvador has an obligation under Paragraph 5(a) of the *GATS Telecommunications Annex* and Paragraph 2.2 of the *Reference Paper* to require the incumbent to provide non-discriminatory and reasonable access to the public switched network and cost-oriented interconnection. El Salvador is violating these obligations by allowing the incumbent to effectively charge

twice for the same service and to charge its own customers less than it charges competitors.

The mobile subsidiary of CTE Telecom charges an access fee to an end user who wishes to make a long distance call through a competitive carrier. At the same time, the mobile subsidiary charges the competitive carrier an access charge for the same service. Customers of the CTE Telecom subsidiary do not pay an access fee. Thus, this practice is discriminatory and results in double charges.

In addition, the CTE Telecom affiliate that operates pay phones charges its customers less for long distance calls on the pay phones than it charges competitive carriers to carry the same long distance traffic. The CTE Telecom affiliate is able to do this by claiming that it has less than 10,000 pay phones in the country and is therefore not subject to normal regulation. Whether the figures are correct or not, SIGET should take steps to end the discriminatory pricing and require cost-oriented prices for pay phone services. Only this way will the access promised under the *GATS Telecommunications Annex* and the non-discriminatory and cost-oriented pricing required by the *Reference Paper* be effective.

Venezuela

Venezuela undertook market access and national treatment commitments in the WTO *Basic Telecommunications Agreement* for all services, other than local voice services. Venezuela incorporated some but not all of the *Reference Paper* provisions. The *GATS Telecommunications Annex* requires non-discriminatory and reasonable terms and conditions for access to the public switched network for the provision of the services for which commitments were made. Venezuela has failed to live up to its obligations under the *GATS Telecommunications Annex*. This failure also can be viewed as a violation of Venezuela's obligation to maintain measures to prevent anti-competitive conduct, as required by the *Reference Paper*. Finally, Venezuela has failed to live up to its obligations to allow market access for transmission of packet-switched data, such as Internet services.

WTO VIOLATIONS – GATS and GATS *Telecommunications Annex*

Discriminatory and Unreasonable Terms and Conditions for Access to the Public Switched Network: The incumbent operator in Venezuela, CANTV, and its mobile subsidiary fail to provide access to the public switched network on non-discriminatory and reasonable terms and conditions in a number of ways. As in Guatemala, CANTV refuses to provide billing and collection services to its competitors even though it provides those services to its subsidiaries. A Presidential Decree recognizes the importance of requirements for billing and collection services and the need for non-discriminatory provision of those services. For the decision to become binding on CANTV, it is necessary to modify the Rules on Interconnection to designate billing and collection services as essential services and also to issue rules governing provision of

those services. Although the regulator, Comisión Nacional de Telecomunicaciones (“CONATEL”), has made the necessary modifications to the Rules on Interconnection and drafted specific rules for billing and collection services, the Government has not taken the steps needed to bring the rules into force. The Government's failure to do so is causing significant harm to competitive carriers and violates Venezuela's obligation to provide non-discriminatory and reasonable terms and conditions for access to CANTV's network.

The prices for fixed-to-mobile termination are unreasonable and discriminatory, as they are in many other countries. The prices are much higher than fixed-to-fixed termination, making it difficult for competitors to serve the Venezuela market.

Venezuela has failed to take action to provide reasonable terms and conditions for use of the public switched network in another way. The existing interconnection agreements are priced in U.S. dollars but payments are made in Venezuelan bolivars. The Government of Venezuela fixed the dollar-bolivar exchange rate recently, significantly devaluing the bolivar. This has resulted in unreasonable charges for interconnection and other services covered by the interconnection agreements. Government action is needed to address this problem without opening other parts of the interconnection agreements to renegotiation. Yet CONATEL has failed to take any action.

Lack of Market Access for Data Services: While Venezuela did not adopt the *Reference Paper* obligations regarding interconnection, it did agree to allow foreign suppliers to provide data services, such as Internet access. CANTV has refused to include such services as part of its interconnection agreements, effectively denying the promised access. This failure can also be seen as a violation of the GATS *Telecommunications Annex* to provide access to and use of the public switched network for the supply of a service for which a commitment was undertaken.

New Zealand

WTO VIOLATIONS – *Reference Paper*

CompTel/ASCENT identifies two important barriers to competition in New Zealand: high mobile termination rates, and discriminatory pricing for local access leased lines.

Mobile Termination: Mobile termination rates in New Zealand are among the highest in the Asia Pacific region at approximately \$0.23, which is more than fourteen times higher than the rates paid to terminate calls on fixed networks in New Zealand. Further, New Zealand's international operators have indicated that they may increase these rates to even higher levels. The reduction of mobile termination charges in New Zealand would bring immediate benefits to New Zealand and its WTO trading partners.

The Commerce Commission (“ComCom”) should be encouraged to take formal action to reduce these charges.

Local Access Leased Lines – Discriminatory Pricing: On December 20, 2003, the ComCom issued its final report and recommendation to the New Zealand Government on the matter of whether to regulate access to Telecom New Zealand’s (“TCNZ”) local loop, bitstream and Public Data Network (*i.e.*, leased lines). In this decision, the ComCom issued several recommendations harmful to competitive carriers and protective of the incumbent TCNZ. Specifically, ComCom declined to require cost-oriented unbundling of the local loop, declined to require cost-oriented bitstream access to the incumbent’s DSL services, and finally, declined to require cost-oriented pricing and non-discriminatory access to local leased circuits. The ComCom’s recommendation fails to enforce New Zealand’s *Reference Paper* Section 2.2 commitments, and the USTR should encourage the New Zealand Government, an important trading partner, to reject these recommendations from the ComCom.

For the reasons described above, the CompTel/ASCENT Alliance urges the U.S. Government to work aggressively with the Governments of France, Guatemala, El Salvador, Venezuela, and New Zealand to open their markets to competition and to ensure fair and non-discriminatory market conditions in accordance with their international trade commitments. Should you have any questions concerning these additional comments, please do not hesitate to contact me in that regard.

Respectfully submitted,

A handwritten signature in black ink, reading "Carol Ann Bischoff", is positioned above a vertical line.

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