



Arun Gupta
Vice President & Head
Wholesale Business

January 11, 2005

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. 20503

Re: Reply Comments of VSNL to Section 1377 Request

Dear Ms. Blue:

Videsh Sanchar Nigam Limited ("VSNL") hereby responds to the comments filed by CompTel/ASCENT ("CompTel"); the Telecommunications Industry Association ("TIA"), and the United States Council for International Business ("USCIB") on December 17, 2004 in the USTR's annual Section 1377 review regarding compliance with certain telecommunications trade agreements. The stated purpose of the review is to determine whether U.S. trading partners have violated their telecommunications trade commitments.

In their comments, CompTel, TIA and USCIB argue that India is in violation of its obligation under Section 5(a) of the Annex on Telecommunications to the WTO Basic Telecommunications Agreement. Section 5(a) requires that each Member shall ensure that "any service supplier is accorded access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions." CompTel, TIA and USCIB argue that India is not in compliance with this requirement because, in their view, VSNL has unreasonably constrained access to cable landing stations in India while preventing upgrades to existing cable systems landing in India.

VSNL will briefly rebut these comments, which simply rehash certain arguments raised in last year's Section 1377 comments. Initially, VSNL would note that India is not subject to the access obligation in Section 5(a) of the Annex on Telecommunications. Section 5(g) states explicitly that "a developing country Member may, consistent with its level of development, place reasonable conditions on access to and use of public telecommunications transport networks and services," and that such conditions "shall be specified in the Member's Schedule."

In this case, India stated in its Schedule that "[t]he definition and principles on the regulatory framework for the basic telecommunication services subscribed to by India are contained in the annex titled 'Explanatory Paper on Additional Commitments by India.'" In the Explanatory Paper on Additional Commitments by India, there is no generic access condition other than the provision in

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Section 2.2 stating that the technical quality of interconnection with a major supplier in India should be no less favorable than that provided for the major supplier's own like services. Hence, the CompTel, TIA and USCIB comments are based on the incorrect premise that India is subject to the access obligation in Section 5(a).

Further, VSNL categorically rejects the allegation that it has unreasonably constricted access to cable landing stations in India. The commenting parties do not identify even one concrete instance where VSNL has allegedly engaged in such activities. The only objection of which VSNL is aware consists of allegations made by FLAG Telecom regarding access to the FLAG Europe Asia ("FEA") cable in Mumbai. VSNL would note that there are six other submarine cable systems that land in India today - namely, Indo-Gulf; SEA-ME-WE2; SEA-ME-WE3; SAT-3/WASC/SAFE (2); and the Tara Indicom Cable. Two more fiber optic cable systems - SEA-ME-WE4 and Falcon - are scheduled to become operational in the near future. It should be noted that VSNL does not have any ownership interest in the (2) system, which is owned by Singapore Telecom and the Bharti Group, or the Falcon cable system, which will be owned by FLAG Telecom. VSNL is not aware of any allegation that access to any of these six existing and two planned cable systems has been, or will be, unreasonably constricted by VSNL. VSNL rejects the allegation that India is in violation of its international treaty commitments based on a single commercial dispute over contractual access rights to one of nine cable systems landing in India.

For the record, VSNL would note that the objection raised by FLAG Telecom last year regarding access to existing available capacity on the FEA cable at the Mumbai cable landing station was resolved through an agreement voluntarily entered into by FLAG Telecom and VSNL on May 4, 2004. FLAG Telecom issued a Press Statement on July 5, 2004 stating that "[w]ith the signing of this agreement, FLAG Telecom and VSNL have settled their differences amicably to the extent of the issue of access for existing capacity available under the C&MA for sale on the FEA cable system." In a letter to the FCC dated July 6, 2004, FLAG Telecom reiterated that "this issue has been settled amicably to the extent of access to existing capacity available under the C&MA for sale on the FLAG Europe Asia cable system." See Letter from K. van Ophem, FLAG Telecom, to M. Dortch, FCC (July 6, 2004) (File No. ITC-214-20030728-00376). Hence, the only concrete dispute regarding access to available existing capacity on any submarine cable landing in India has been resolved.

VSNL acknowledges that FLAG Telecom has raised issues regarding the upgrade of the FEA cable system under the applicable Construction and Maintenance Agreement ("C&MA"), and that FLAG Telecom has initiated arbitration proceedings at the Hague alleging a violation of the C&MA. While VSNL does not believe it is appropriate to address the merits of the arbitration in this Section 1377 proceeding at this time, VSNL would reiterate that a single commercial dispute regarding contractual rights pertaining to one of many cable systems landing in India does not rise to the level of an international treaty violation.

Yours faithfully,
For Videsh Sanchar Nigam Limited


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