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Office of the U.S. Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

Attention: Rhonda Schnare, Esq.
Office of the General Counsel

Re: Reply Comments in Section 1377 Review

Dear Ms. Schnare:

The submissions that have been made in response to the United States Trade Representative's request for comments concerning implementation of trade agreements regarding telecommunications products and services contain many observations that purport to describe the state of competition and telecommunications regulation in a number of countries. These observations could, if USTR so chooses, serve as a starting point for further factual inquiry into the matters that have been raised. The comments should not, however, form the basis of any conclusions about what is actually taking place in these markets, especially as to interconnection and access to the networks of major suppliers, nor should the comments be construed to be a correct interpretation of the scope of these agreements.

Some of the comments contain vague, unsupported and conclusory statements about the practices of major suppliers, with no description of what those suppliers are doing or explanation of exactly how those practices violate trade agreements. AOL Time Warner, for example, alleges that in Germany, DT "[r]efuses to tariff wholesale circuit capacity at cost-oriented rates."[1] It is not clear whether this commentor is complaining that DT refuses to provide capacity at all, whether it is saying that the service is not provided under tariff or whether it is complaining about the price DT is charging. And if it is the third of these, there is no indication what AOL Time Warner thinks "cost-oriented" means or how DT's rates deviated from that

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1 AOL Time Warner at 2.

standard. AOL Time Warner also seems to try to sweep within the scope of "interconnection services necessary for competition" services that plainly do not belong there, such as DSL.

AOL Time Warner is not the only commentor that fails to make even a prima facie case of a trade agreement violation in its comments, by failing to provide adequate details about the conduct involved or any explanation of how that conduct violated an agreement. CompTel does this repeatedly; for example, "In Germany, for instance, the incumbent refuses to provide local access leased lines in a timely, nondiscriminatory manner and to provide a viable leased line interconnection product,"[2] and "[d]espite the requirements of Section 2.2(b) of the *Reference Paper* for cost-oriented rates, Australian rates for local access leased lines are excessive."[3] In fact, CompTel in some cases does not even identify the countries it believes to be at fault: "Similarly, incumbents in other regions have refused to offer cost-oriented and timely provisioning of local access leased lines"[4] and "[i]ncumbents in many markets continue charging prices that are far above cost for leasing local access lines to their competitors."[5]

In other cases, commentors propose new regulatory requirements. CompTel argues that national regulatory authorities should

> "(1) require incumbents to report data on leased line provisioning (*e.g.*, cost provisioning times, quality of service standards) in a uniform, transparent and auditable way to permit comparison of incumbents' provisioning of leased lines to their affiliates, retail customers and wholesale customers/competitors; (2) analyze such data on a regular basis to identify any anticompetitive practices and develop a European 'best practice' for leased lines; (3) determine appropriate standard delivery intervals based on European best practices; and (4) impose uncapped penalties to deter anticompetitive practices in provisioning."[6]

CompTel does not explain how rules of this sort are required by anything in the trade agreements, and there is nothing in those agreements that requires that such a system be adopted.

We believe that the ability of U.S. companies to identify trade barriers or actual violations of trade agreements is integral to the process of realizing meaningful market access and pursuing effective remedies when such market access is impeded. However, if parties expect their claims to serve as the basis for remedial action by USTR or to be relied on by USTR in reports to Congress, those claims should be factually substantiated as violations of trade agreements. There is a substantial difference between making an unsupported claim that certain practices of foreign telecommunications operators constitute barriers to trade, and describing exactly what those practices are and proving that they are trade violations. We therefore urge

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2 CompTel at 2.

3 CompTel at 7.

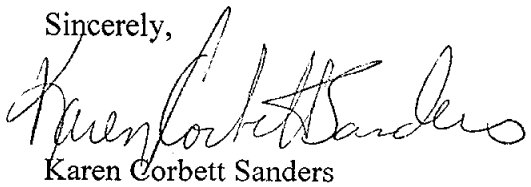
4 CompTel at 2.

5 CompTel at 3.

6 CompTel at 7.

USTR, both in preparing its review of telecommunications trade agreements and in determining whether to initiate any remedial action, to avoid citing as trade violations any claims that are not documented, substantiated and explained.

Sincerely,



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