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CompTel

January 30, 2001

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, DC 20508

RE: **GERMANY, MEXICO, SOUTH AFRICA AND JAPAN:** *WTO General Agreement on Trade in Services*

JAPAN: *May 1998 U.S.-Japan Deregulation Joint Statement*

TAIWAN: *1998 Agreement on WTO Accession Commitments in Telecommunications Services (US-Taiwan Accession Protocol)*

Dear Ms. Blue:

Pursuant to Section 1377 of the Omnibus Trade and Competitiveness Act of 1988, 19 U.S.C. 3106 ("Section 1377"), the Competitive Telecommunications Association ("CompTel") hereby responds to the request of the Office of the United States Trade Representative ("USTR") for comments regarding compliance with certain telecommunications trade agreements. CompTel is the premier U.S. industry association representing competitive telecommunications carriers and their suppliers. CompTel has 20 years of experience working actively to advance telecommunications competition in the United States and other countries. With the development of liberalized regulatory regimes and competitive market conditions in a growing number of countries, many of CompTel's members have made significant investments in telecommunications facilities and services outside the United States. CompTel appreciates the opportunity to present its members' experiences in Germany, Mexico, South Africa, Japan and Taiwan.

GERMANY

Since last February, when CompTel commented on Germany, the market situation for competitive carriers has worsened. The intermingling of interests between the German Federal Government and Deutsche Telekom ("DTAG"), which the German Federal Government controls in numerous overt and subtle ways, remains a serious problem. CompTel is concerned about the recent development in the German market, as described below, that presents a serious barrier to entry bearing directly on USTR's 1377 review of Germany's trade commitments under the WTO *General Agreement on Trade in Services* ("GATS"), specifically Germany's Schedule of Specific Commitments, which incorporates its telecommunications obligations, and the Reference Paper ("*Reference Paper*") negotiated as part of the WTO *Basic Telecommunications Agreement*.

Licensing Fees: The exorbitant licensing fees in Germany that CompTel addressed in its last filing remain unresolved and are a serious barrier for new market entrants. These fees are premised upon an up-front payment of administrative costs *projected over a 30 year period*, without possibility of a refund if a carrier ceases doing business in Germany or if the administrative costs of the German regulator ("RegTP") decrease over time. No other country in Europe or North America charges license fees this onerous.

Anti-Competitive Practices: The most recent developments in Germany reinforce the long-standing impression that DTAG's strategy of price squeezes and delayed delivery of vital services to competitors continues to undermine seriously the entry of competitors into lucrative market segments. In fact, the German market for telecommunications continues to fall short of a competitive market. In the German local market, competitors' market share remains insignificant. According to a recent market study of the German Competitive Carriers' Association ("VATM"),[1] no significant growth of the competitive market share is to be expected. In fact, competitors were only able to generate local traffic of 4 million minutes/day (equal to a market share of 1.1 %, which is nearly unchanged from the 0.6% market share recorded in 1999) by the middle of this year, whereas DTAG succeeded in generating 364 million minutes of local traffic per day. With control over 98.5% of the end users, DTAG remains the de-facto monopolist in the local market.

DTAG also engages in cross-subsidization. In Germany, the Federal Ministry of Economics and the Chairman of the German Parliament's Telecommunications Subcommittee, Mr. Barthel, have publicly declared that they want to lift the long-standing *"ex ante"* price control in certain sub-markets, which means that the RegTP will no longer review DTAG's prices before they become effective. This measure will almost certainly encourage DTAG to engage in below cost pricing for special customer groups, which will lead to a customer migration from the competitors back to DTAG. There is no control over DTAG's prices because the Ministry and the RegTP are not advocating accounting separation of DTAG to the extent that markets (both regional and products) under price control are separable from markets without price control. This is particularly

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[1] See Study of Dialogue Consult at http://www.vatm.de/, "Presse", 25.10.2000 (in German).

true if the German market will be divided into several regional markets, as proposed by the Ministry.

Access to the Local Loop: As in the United States, the key to local competition in the German market lies in access to the local loop of the incumbent network operator and to the collocation spaces necessary and sufficient to utilize interconnection with DTAG's local network. Here, the DTAG's obstructionism has burdened competitive carriers with serious obstacles to fairly competing with the incumbent. Some current instances of self-serving discrimination at the hands of the incumbent include failure to provide timely provisioning service for collocation and unbundled loops and totally inadequate operations support systems ("OSS"), including access to service coordination functions. Recently, DTAG announced that it intends to raise the charges for leasing a copper loop from currently DM 25.40 (US$ 12.10) per month to approximately DM 34 (US$ 16.20) as of April 1, 2001 -- an increase of more than 33 percent. DTAG intends to raise these prices despite the already existing heavy criticism over the current charges of DM 25.40 being much too high. Even where the German regulator has acted to promulgate deadlines and standards, DTAG continues to avoid implementing them, such as a June, 2000 RegTP decision on unbundling that specified binding provisioning intervals for unbundled loop access and collocation by DTAG. Since last summer, the actual provisioning times achieved by DTAG have deteriorated rather than improved, and have at all times greatly exceeded the deadlines supposedly mandated by the RegTP. DTAG further exacerbates this situation through its secrecy, refusing to publish or share on a confidential basis information on its network planning and interconnection availability.

Collocation: DTAG also has imposed conditions in its most recent unbundling contract that further burden competitive carriers in their attempts to gain collocation space. None of these conditions have any corresponding benefits, such as improved network planning information, provisioning times for collocation space or more flexibility, such as permitting the sharing of collocation space. Last year, VATM initiated a survey among its members that covered approximately 1,500 orders for collocation space under the Local Loop contract, placed by 15 different carriers.[2] The results of this survey speak for themselves:

[2] *See* Market Study in VATM's Congressional Testimony on September 7. 2000: http://com-notes.house.gov/cchear/hearings106.nsf/a317d879d32c08c2852567d300539946/b5c280e153d86bb68525695100545dd4?OpenDocument.

1) Preparing an offer
(a) In 86.3 % of all cases, DTAG exceeds the stipulated interval for Preparing an Offer for collocation space (the interval is supposed to be 20 days according to the agreement between the Competitors and DTAG, as approved by the RegTP)
(b) In 50.69 % of the cases mentioned under (a), DTAG exceeds the interval for Preparing an Offer for collocation space by 250% (50 days or more).
2) Provisioning of collocation space
(a) In 77.02% of all cases, DTAG does not comply with the provisioning intervals, which is 16 weeks from the receipt of the final order by DTAG.
(b) In 32.77 % of all cases, DTAG exceeded the stipulated interval for providing collocation space by 12 weeks or more (more than 75% of the stipulated time). This number is expected to increase because DTAG has not even processed many pending orders.
(c) In 171 cases, DTAG did not provide the requested collocation space at all, particularly when DTAG's Central Office was located in an attractive commercial area. This is happening on an increasing basis.
(d) The situation of placing offers and the provision of collocation space is particularly burdensome in the metropolitan bottleneck areas Essen, Düsseldorf, Stuttgart, Munich, Hamburg, Cologne, Karlsruhe and Freiburg. In addition, competitors have observed that serious provisioning delays with DTAG are increasing in smaller cities, such as Hagen, Gelsenkirchen and Krefeld.

CompTel echoes VATM's conclusion that: "Even after the RegTP decision rendered on June 7, 2000, DTAG seriously obstructs competition on the local markets as the survey clearly demonstrates, not only in individual cases, but systematically by artificially created bottlenecks. In particular, new market entrants in the local markets suffer from DTAG's obstruction policy."

The combination of excessive provisioning times, disregard of contractual lead times and poor allocation of resources hamper the deployment of competitors' networks. Moreover, even as the shortage of space depends on, and is largely within the control of DTAG's real estate subsidiary, the DTAG wants to impose increasingly stringent forecasting requirements for spaces on competitors.

Interconnection: In virtually all instances, competitive carriers must rely on interconnection by DTAG to reach German end-users. In its *2000 National Trade Estimate Report on Foreign Trade Barriers,* the USTR stated that: "The competitors to DTAG operated in considerable contractual uncertainty throughout 1999, after DTAG cancelled existing interconnection agreements in December 1999" (at p. 119). This situation of uncertainty has worsened. One of the main reasons for the continuous struggle on interconnection issues between DTAG and its competitors in Germany (with dozens of complaints filed every year with the RegTP) is the fact that DTAG still dictates unilaterally the rules and conditions for interconnection. For many U.S. competitive carriers seeking to do business in Germany, the interconnection difficulties are reaching

the boiling point. Serious backlogs remain for obtaining points of interconnection for competitors from DTAG, particularly in bottleneck metropolitan areas. Further, additional delays result from DTAG's deliberate strategy of retiring relevant technical personnel and of outsourcing the provisioning of interconnection services to sub-contractors who are not familiar with DTAG's network. Last fall, RegTP negotiated, rather than imposed on DTAG, a new interconnection regime with network-element-based charges. This new regime was scheduled to be implemented by mid 2001, as a result of an exhausting proceeding between the competitors, DTAG and RegTP. It is now put on hold by the German courts for mere procedural reasons, due to a lawsuit filed by DTAG. Consequently, competitive carriers cannot efficiently plan when interconnection and the ensuing number of lines will become available at a certain point of interconnection and at which rates.

Internet Pricing: CompTel is also concerned about DTAG's anti-competitive practice of providing retail flat rate Internet access that cannot be duplicated by any of its competitors, since no competitor's network equals that of DTAG. Although DTAG offered a flat rate to consumers as of last summer, it only recently has been required by RegTP to offer a wholesale rate to Internet service providers and competitive carriers. The *Reference Paper* requires RegTP to maintain "appropriate measures" to prevent a dominant carrier from engaging in anti-competitive practices. RegTP's action, however, falls short of ensuring that DTAG provides a wholesale rate which allows for competition.

Lack of Transparency in Appellate Proceedings: CompTel is also concerned about the lack of transparency in current German appeals court processes governing interconnection terms and conditions with DTAG. Only DTAG, a single competitor to DTAG, and the RegTP are permitted to participate in the appellate process, which will determine the interconnection terms and conditions that will, as a practical matter, govern all competitors' dealings with DTAG. This lack of transparency may be particularly harmful in this context, but is troublesome as a general matter, regardless of the particular issue at hand.

In August 2000, RegTP made a decision regarding the interconnection rates and related terms and conditions to apply with respect to Mannesmann Arcor for the 2-year period from June 2001. The decision was based on an interconnection order proceeding initiated by Mannesmann Arcor. These proceedings allowed representatives from other operators to participate, many of whom participated actively. The outcome of these proceedings was expected to help determine the terms of interconnection available to all parties in the market from June 2001. The RegTP's decision, which replaced interconnection charges derived from retail pricing structures with charges derived from network elements consumed, and introduced a form of forward looking long run incremental cost pricing, was widely welcomed by competitors within the German market.

DTAG is, under German law, entitled to challenge the decision of the RegTP. It chose to do so, and obtained an interim stay on December 19, 2000 from an Administrative Court of Appeals in Cologne pending a full hearing in the proceeding, which is expected before June of 2001. RegTP has subsequently appealed the initial

decision of the RegTP Cologne Court and a hearing in this appeal is expected in February or March before the Administrative Court of Appeals in Münster.

CompTel does not take issue with the substance of the RegTP decision, or DTAG's right to appeal decisions made by the RegTP. CompTel has found, however, that the effect of any appeal of a RegTP decision in Germany is to immediately eliminate any transparency from the action. CompTel 's member companies have direct, legitimate interests in the future terms of interconnection in Germany, but they are denied any opportunity to participate in the substantive debate, which will now determine what those terms are. The outcome of these appeal proceedings will determine the interconnection arrangements for all operators in Germany after June 2001.

Specifically, no other companies may become parties to the hearing of DTAG's appeal, or challenge the initial suspensory decision of December 2000. Only Mannesmann Arcor, DTAG and RegTP are entitled to participate in the proceedings. This factor means that other companies have no opportunity to receive papers that might allow them to assess or understand DTAG's objections to the RegTP's decision, or RegTP's response. Existing interconnection arrangements expire in June 2001, but CompTel's members are afforded no visibility of the proceedings that will determine subsequent arrangements.

Indeed, the only way in which CompTel's members could gain access to the courts would be to initiate a separate proceeding. This would require DTAG to offer a new contract proposal to the company, and obtain rejection and referral to the RegTP for adjudication. DTAG or the company would then appeal the resulting decision to the courts. This process could not be accomplished before the current court proceedings expire.

CompTel urges the U.S. Government to engage the German Government regarding ways in which this process could become transparent, in this matter and in future appeal processes, so that all competitors will be afforded an opportunity to participate in any proceeding that will have a direct and substantial impact on their business plans.

MEXICO

Over the past three years, the U.S. Government has encouraged Mexico to make real changes in its telecommunications regulatory regime to bring it into conformity with its WTO commitments for basic telecommunications services. Unfortunately, despite promises of real change, no real advances have been made. This has led USTR to take formal action under the WTO dispute settlement procedures. Specifically, USTR has held two sets of consultations with the Mexican Government and has formally requested a WTO panel.

These USTR actions are the result of trade barriers in several specific areas of Mexico’s telecommunications market:

Domestic Interconnection: Pursuant to the *Reference Paper*, Mexico is obligated to ensure timely, non-discriminatory, and cost-based interconnection with Telmex at any technically feasible point in its network. For interconnection of domestic long distance calls to Telmex's network in a city where a new competitive carrier has a network, Telmex had charged that competitive carrier a rate that exceeds three cents per minute, without cost-justification. Recently, the Mexican Government lowered on-net interconnection to a base rate of 1.25 cents/minute, which was a positive step. Although this base rate now appears to be effective in Mexico, Telmex has appealed this decision in the Mexican courts, where the case is pending. Thus, there is no guarantee that the base rate of 1.25 cents/minute will be affirmed on appeal. For interconnection of domestic long distance calls to Telmex's network in a city where a new competitive carrier does not have a network, however, Telmex charges that competitive carrier a "resale" tariff rate that is greater than 9 cents per minute, without cost justification. Similar regional interconnection is routinely available in competitive countries for 2 to 3 cents per minute.

International Interconnection: Mexico's commitment under the *Reference Paper* to provide cost-based interconnection also applies to the international traffic exchanged between U.S. and Mexican carriers. The current cross-border interconnection rate charged by Telmex is nearly five times higher than the cost-based rate routinely available in competitive countries of around 4 cents per minute. The Mexican Government has implemented regulations that permit Telmex alone to negotiate these cross-border settlement rates, without participation by its competitors in Mexico.

Anti-Competitive Practices: Mexico has failed to implement and enforce its rules and regulations that would prevent Telmex from acting on an anti-competitive basis, as required by Mexico's commitments under the *Reference Paper*. Telmex has denied competitors phone lines needed to provide service, priced its own services at predatory rates, refused to allow other carriers to interconnect to its network, and withheld fees it owes competitors. Mexico has recently released new rules to regulate Telmex that could possibly address these types of violations. Unfortunately, these regulations are generally the same as rules that are already in place, and they provide no new method of enforcement, which is the key to ensuring that Telmex does not act anti-competitively. Furthermore, Telmex has appealed these new rules in the Mexico courts, further delaying their implementation.

SOUTH AFRICA

Telecommunications Facilities for VANS: South Africa committed to open its market for value-added network services ("VANS") under the GATS. VANS suppliers must obtain leased circuits from Telkom SA to provide their services. In mid-1999, Telkom SA began to deny access to the telecommunications facilities for competitors, although Telkom SA continued to provide those facilities to its own VANS services, in violation of South Africa's WTO commitments under:

- GATS Article VIII, which prevents a monopoly supplier such as Telkom from acting in a manner inconsistent with South Africa's obligations or from abusing its

monopoly position when competing in the supply of a service outside the scope of its monopoly rights;

- GATS Articles XVI and XVII, which mandate market access and national treatment for VANS services; and

- The GATS *Annex on Telecommunications*, which requires that VANS suppliers receive "access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions."

In August, Telkom SA started provisioning telecommunications facilities to one U.S. company, AT&T, but other companies have not received their requested lines. Also, Telkom SA has since filed a complaint with the Independent Communications Authority of South Africa ("ICASA"), falsely alleging that AT&T was using these facilities to provide services outside the scope of its VANS licenses. AT&T rejects these allegations. Furthermore, Telkom SA recently stopped provisioning facilities to AT&T as well.

Telkom SA's blatant abuse of its power and its arbitrary and unfounded position not to provision circuits to the VANS suppliers continues to foreclose effective competition in the value added services marketplace. CompTel therefore urges the U.S. Government to work aggressively with the South African Government to open this market for competition under its WTO commitments.

Draft Ownership Regulations: On October 11, 2000, ICASA issued several notices regarding draft regulations for VANS. Notice 4041 of 2000 proposes to require that VANS licensees shall be at least 15% owned by historically disadvantaged persons, who are persons discriminated against during the years of apartheid. Notwithstanding the South African Government's wish to promote the interests of such disadvantaged persons, the regulation, if adopted, would have serious repercussions for South Africa.

As noted by the United States Government in its recently filed comments on Notice 4041:

> The United States recognizes that the South African government may legitimately wish to promote the interests of such disadvantaged persons. . . . We believe, however, that attempting to achieve such goals through limitations on foreign ownership of VANS licensees has significant drawbacks and may violate South Africa's international commitments…. Such a limitation could have a chilling effect on the willingness of foreign investors to invest in South Africa at a time when such investment is needed. . . . It would also seem unfairly to penalize those foreign entities that have already invested in VANS operations in that it would appear to force such investors to divest 15 per cent of their investment apparently without compensation. Finally, the proposed regulation would appear to be

inconsistent with South Africa's commitments under the WTO GATS agreement.

GATS Article XVI prohibits WTO Members from maintaining an unscheduled limitation on the participation of foreign capital. Also, GATS Article XVII requires Members to provide no less favorable treatment to services and service suppliers of other Members. By setting aside 15 percent of VANS companies to be held by South Africans who were historically disadvantaged, South Africa is limiting foreign ownership to 85 percent, but has scheduled no such limitation or horizontal exception in its GATS commitments.

CompTel concurs with the United States Government's comments and is hopeful that the effect of these comments, and others filed directly with ICASA by individual companies, will result in ICASA withdrawing the proposed regulation and seeking other ways to involve historically disadvantaged persons in South Africa's information technology sector.

JAPAN

Japan has made significant market opening commitments as part of the WTO's *Basic Telecommunications Agreement*. These commitments included certain regulatory principles incorporated in the *Reference Paper.*

CompTel members greatly appreciate the USTR's efforts in Japan, including specifically the MPT's Long Run Incremental Cost ("LRIC") model negotiated between the MPT and the USTR for implementation in 2000. CompTel remains concerned, however, about the failure of the MPT to allow fair competition within the Japanese telecommunications market through lack of regulation for NTT Group members, lack of an independent regulator and transparency, high interconnect charges, and unbundling the local loop/local access/rights of way issues.

Lack of Regulation of NTT Group Members: In 1999, the Ministry of Posts and Telecommunications ("MPT") oversaw a process that resulted in Nippon Telegraph and Telephone ("NTT") being split into 5 companies – a parent holding company, NTT East, NTT West (both local service telecommunications companies), NTT DoCoMo (mobile) and NTT Communications (domestic long distance, Internet and international service). NTT East and West are designated carriers that have their tariffs subject to MPT approval. NTT DoCoMo and NTT Communications are permitted by MPT to enter new markets without regulatory control.

The MPT does not regulate NTT Group members as dominant carriers, although NTT East and West jointly control more than 90% of Japan's subscriber lines. NTT Communications has 41% of the combined long distance/international market, plus approximately 55% of Internet access subscriber lines. NTT DoCoMo has a 59% market share in mobile. Nonetheless, the MPT argues that DoCoMo and NTT Coms are separate from NTT and should therefore not be regulated like the rest of NTT.

The MPT must establish a clear and detailed regulatory environment. Such guidelines must regulate how the NTT companies trade amongst themselves and with competitors. These guidelines must be sufficiently detailed (e.g., on cross-subsidy, on tests for predatory pricing, on transparency of accounts, on misuse of customer information, on dominant carriers) and published by the MPT.

Lack of an Independent Regulator: To date, Japan has not created an independent regulatory authority. Paragraph 5 of the *Reference Paper* states that the regulatory body must be "separate from, and not accountable to, any supplier of basic telecommunications services." The Government of Japan continues to own a significant stake in NTT, the former monopoly. At the same time, the Ministry of Posts and Telecommunication, now combined into a "super" Ministry of Public Management, Home Affairs, Posts and Telecommunications, is a constituent element of that government. Yet it exercises regulatory control over NTT. The fact that the Ministry of Finance is technically separate from the Ministry of Public Management, Home Affairs, Posts and Telecommunications does not satisfy the "separation" or non-accountability criteria of the *Reference Paper*.

Furthermore, Paragraph 5 of the *Reference Paper* requires that the decisions and procedures of the regulator must be "impartial with respect to all market participants." The Ministry regularly favors NTT in its decision-making process, thus violating its WTO obligations. For example, in the discussions on interconnection and the introduction of LRIC pricing, the Ministry consistently argued that it could not impose requirements on NTT that would hurt NTT's profits or management. There was no consideration in those discussions of the harm done to competitive carriers' financial conditions as a result of the high interconnection charges.

This lack of separation between the regulator and the operator and the bias in favor of NTT is evident from NTT's practice of sending its employees to the Ministry to work for a few years and then bringing those employees back to NTT. These NTT employees work at the Ministry without identifying their status. They are not recused from participation in actions concerning NTT. Moreover, while at the Ministry, the NTT employees have the opportunity to view confidential filings from other carriers and can pass the information back to NTT. In addition, many Ministry officials "retire" to official positions at NTT, notably its board of directors. To facilitate this practice, the Ministry is likely to favor NTT in its decisions and the former Ministry officials certainly have access to their former colleagues and persuasive powers on behalf of NTT far in excess of any access or persuasiveness of employees or board members of the competitive carriers.

Finally, at present, there is no publication of MPT deliberations, no requirement for public consultations, limited and untimely access to MPT data and no right of appeal from MPT decisions. When the MPT does hear public comments, it typically sets very short timeframes for filing comments and does not disclose why it accepts or rejects

public comments. The process must become fairer, more transparent and subject to appeal.

Excessively High Interconnect Charges from NTT to Japanese Carriers: The *Reference Paper* and the *May 1998 U.S. - Japan Deregulation Joint Statement* require that interconnection be available at "cost-oriented" rates. The *Reference Paper* also requires that measures be taken to prevent suppliers from engaging in anti-competitive practices, such as cross-subsidization. LRIC modeling is a key method used by regulators throughout the world to ensure that interconnection rates charged by the incumbent operator are "cost-oriented." Cost-oriented rates ensure that customers benefit from lower rates, more service options, and innovations in services and technologies.

Although CompTel endorses the work of the LRIC Model Review Working Group in developing an appropriate LRIC model, CompTel is concerned that the work will not result in a true LRIC computation that complies with Japan's obligation to ensure cost-oriented rates. For example, CompTel is concerned that the Working Group is not addressing adequately the improper inclusion of non-traffic sensitive costs that are more appropriately attributed to the provision of access lines rather than the transport and termination of traffic. Due to the inappropriate inclusion of non-traffic sensitive costs, the LRIC model will cause NTT's interconnection rates to be significantly higher than comparable rates in the United States and Europe. Without a meaningful reduction in interconnection charges and efforts to ensure unbundling of local loops, competitive carriers will have little success in challenging the dominant market position of NTT, thus stifling competitive entry to the Japanese market and preventing Japanese consumers from reaping the benefits of a fully competitive telecommunications marketplace. There is also evidence that the fixed to mobile termination rates are high. To ensure competition, MPT must effectively regulate NTT DoCoMo as a dominant carrier.

Local Access/Rights of Way: Japan is violating Paragraph 6 of the *Reference Paper*, which requires procedures for the allocation of scarce resources, such as rights of way, to be carried out "in an objective, timely, transparent and non-discriminatory manner." This obligation goes both to resources owned directly by the Government of Japan or its municipalities and prefectures and by companies regulated by Japan, whether or not Government-owned. Japan is not fulfilling its obligation under Paragraph 6 with respect to allocation of rights of way both on a Government level and company level. There is little transparency on the municipal or prefecture level as to how rights of way are allocated and the municipalities and prefectures favor the incumbent. NTT also has not provided transparency in the procedures necessary to obtain access to NTT ducts and conduits. In both cases, whatever procedures exist are certainly not timely.

As one example of the lack of transparency, NTT refused to provide one of CompTel's members with a breakdown of the costs involved in surveying portions of the NTT conduits to determine whether there was space available for use. As a result, it was impossible to judge whether the price NTT quoted was reasonable or not.

Discriminatory Treatment of DSL Providers: Additionally, the lack of transparency, when combined with the effective lack of an independent regulatory authority, makes it difficult to determine whether new entrants that make use of unbundled local loops are receiving non-discriminatory treatment as required by the *Reference Paper*. Commercial Digital Subscriber Line ("DSL") service has only just begun, after "graduating" from an extended trial basis. NTT is beginning its own Asymmetric Digital Subscriber Line ("ADSL") offerings. It is proving difficult for at least one CompTel member to determine whether it is receiving non-discriminatory treatment with regard to the terms, conditions and rates of inputs essential to DSL service: loops, collocation, transport and OSS. Moreover, it appears as though NTT is wrongfully withholding key technical specifications from equipment manufacturers that would allow competitors to obtain timely access to approved equipment in order to provide DSL service over the 10 million Integrated Services Digital Network ("ISDN") lines that are currently in use throughout Japan.

Unnecessary and Burdensome Licensing Conditions: Article VI of the GATS states that licensing conditions should be no more burdensome than necessary in order to ensure the quality of service. CompTel's members are concerned about the unnecessary and burdensome distinction made between Type I (facility-based) and Type II (non-facility-based) licenses. Many new entrants operate under both types of licenses, and yet those businesses must be kept separate (*i.e.*, a Type I carrier may not resell another's facilities), notwithstanding the efficiencies that may be gained by streamlined activities. This distinction hinders the ability of new entrant carriers to roll out networks quickly and cheaply by erecting artificial barriers. The Ministry should thus abolish this archaic distinction.

TAIWAN

In 1998, Taiwan entered into a written agreement with the United States setting out the market access terms under which the United States would support Taiwan's accession to the WTO. This agreement, the *U.S.-Taiwan 1998 Accession Protocol*, commits Taiwan to open its telecommunications services market to foreign investors as of July 1, 2001, subject only to certain caps on foreign ownership. The *Protocol* does not limit the number of licensees in any market, nor does it contain any other access limitations or conditions on entry.

Restrictive Licensing Conditions: CompTel finds it very frustrating that it could take last year's 1377 report on Taiwan's fixed wireline regulations and resubmit it. Taiwan has taken no steps to reconcile the inconsistent aspects of those regulations with its commitments under the *Protocol*. With just six months to go before the telecommunications services market is to be opened to all new entrants, the regulations requiring an extraordinary investment of $1.2 billion in the Taiwan market and a build-out of one million exchange lines, 150,000 of which must be installed prior to any service offering, remain in effect.

As CompTel stated in its 1377 submission last year, these operational "conditions are a significant restriction on market access, *de facto* limiting entry to only one or two additional providers." The conditions erect a barrier to entry for carriers that wish to serve the data or Internet service markets -- a barrier that Taiwan should have scheduled if it wished to maintain. Taiwan's failure to schedule any numerical limitations on the number of service suppliers or any restrictions on the type of services that could be provided means that Taiwan cannot maintain these capitalization and buildout requirements.

Since the last 1377 review, Taiwan has adopted submarine cable regulations, which are equally problematic, violating Taiwan's *Protocol* commitments. An international cable system entails building gateways, terrestrial links from the gateways to the cable landing station (and possibly a separate shore landing site), then a submarine cable from the landing station to international destinations. As adopted, the regulations restrict the network development of new entrants, restricting them to one gateway per cable landing station, prohibiting construction of backhaul facilities from the cable landing station, limiting interconnection to a point determined by the incumbent fixed wireline operators and limiting sale of capacity to Type I operators, thereby prohibiting sale of capacity directly to Internet Service Providers ("ISPs").

These restrictions violate Taiwan's commitments in a number of ways. First, under the *Reference Paper*, the provisions of which Taiwan adopted as additional commitments, interconnection must be made available, upon request "at points in addition to the network termination points offered to the majority of users." Fixing interconnection at a point determined by the incumbent operator violates this obligation. Second, Article VI of the GATS, which establishes the rules underlying the commitments in the *Protocol*, requires that licensing regulations be "based on objective and transparent criteria, such as competence and the ability to supply the services," "not more burdensome than necessary to ensure the quality of the service" and "not in themselves a restriction on the supply of the service." Limitations on the number of gateways, the customers and the type of facilities that can be constructed do not meet these criteria. Moreover, when Taiwan and the United States executed the *Protocol* in 1998, these licensing criteria could not have been foreseen.

Lack of Transparency: Under Paragraph 4 of the *Reference Paper*, Taiwan must make "publicly available" "all licensing criteria and the period of time normally required to reach a decision concerning an application for a license," as well as "the terms and conditions of individual licenses." Nevertheless, Taiwan has failed to make publicly available two sets of regulations and licensing criteria referenced in its *Regulations Governing Fixed Telecommunications Businesses*: (1) "Regulations of Permission on Delineation of Course for Laying, Maintaining, or Modifying Submarine Cables or Pipelines on the Continental Shelf of the Republic of China" as described in Article 12-2, and (2) "items for inspection and the criteria for certification" necessary for a Concession License for an International Submarine Cable Leased Circuit Business, as described in

Article 23-2. Taiwan thereby violates its transparency obligations under the *Reference Paper*.

Taiwan must move immediately to bring its fixed wireline and submarine cable regulations into compliance with its commitments under the *Protocol*. In order to have new fixed wireline licenses issued and effective as of July 1, 2001, when the market access commitments come into effect, Taiwan must commence a new domestic fixed wireline licensing round immediately. Although Taiwan has established a task force to review the fixed wireline and submarine cable regulations, it is moving too slowly to permit entry -- actual service provision -- on that date. To meet the deadline, the task force must immediately recommend, and the Ministry adopt, elimination of the operational restrictions in the fixed wireline and submarine cable regulations.

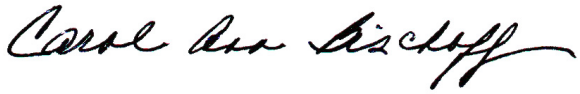
Given the critical importance of international bandwidth to the development of an Internet-based economy, the removal of the WTO-inconsistent restrictions and the issuance of licenses to commence service in July will signal to potential investors that Taiwan has reformed its telecommunications sector. Adherence to its *Protocol* commitments will spur investor confidence and enable Taiwan to become the communications hub it seeks to be.

In our submission last year, CompTel noted that Ambassador Richard Fisher, the former U.S. Deputy Trade Representative, had written to the Government of Taiwan in July 1999, pointing out the inconsistencies of the fixed wireline licensing regime with its commitments. We respectfully urged USTR to follow up on that letter. A year later, CompTel again requests that USTR take action to ensure that Taiwan fulfill its *Protocol* commitments. This year our request is more urgent, as the date for market access fast approaches.

CONCLUSION

For the reasons described above, CompTel urges the U.S. Government to work aggressively with the Governments of Germany, Mexico, South Africa, Japan and Taiwan to open their markets for competition, in accordance with their respective commitments.

Sincerely,



Carol Ann Bischoff
Executive Vice President &
General Counsel