



December 19, 2007

Ms. Gloria Blue

Executive Secretary
Trade Policy Staff Committee
Attn: Section 1377 Comments
Office of the United States Trade Representative
1724 F Street, NW.
Washington, DC 20508

Re: USTR Request For Comments Concerning Compliance with the Dominican Republic—Central America—United States Free Trade Agreement (“CAFTA–DR”) by Guatemala, Pursuant to Section 1377.

Dear Ms. Blue,

On behalf of UNITEL, S.A., I am filing these comments pursuant to section 1377 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3106) (“section 1377”).

According to section 1377, (19 U.S.C. 3106 (a) (2) “... the Trade Representative shall determine whether any act, policy, or practice of the foreign country that has entered into the agreement described in paragraph (1)--

(A) is not in compliance with the terms of such agreement, or

(B) otherwise denies, within the context of the terms of such agreement, to telecommunications products and services of United States firms mutually advantageous market opportunities in that foreign country...”.

History of Universal de Telecomunicaciones, S.A. (Unitelsa)

Unitelsa was founded in 1997 with the liberalization of the Telecommunications market in Guatemala. During this period Unitelsa has evolved from a long distance traffic carrier for a single U.S. company to an innovative, multi company conglomerate investing in the development of wireless internet access and VoIP (Voice over IP technology) in Central America. Through the years Unitelsa has become an important purchaser of equipment made in the U.S., and co-investor in a project for the social and economic development of rural areas of Guatemala in conjunction with the United States Agency for International Development (USAID).

Factual Background

For the development of its telecommunications networks Unitelsa has contracted and purchased, directly and through its subsidiaries, equipment and services from several U.S. vendors such as CISCO, MOTOROLA, NextNet, Juniper, and Nextone.

As part of its switching and direct connect facilities with major suppliers of public telecommunication services in Guatemala and the Central American Region, Unitelsa (through subsidiaries) offers long distance termination services to major American telecom operators such as AT&T, Verizon, and IBasis.

With respect to Guatemalan operations, Unitelsa was selected by ALEXIUS INTERNATIONAL (<http://www.alexius.net>), an American consultant company contracted by the USAID, to implement the "Last Mile Initiative Project" (<http://www.lastmileinitiative.org/home>), as a strategic partner () to provide internet and voice access to the rural areas of Guatemala using its unique wireless technology.

The Last Mile Initiative is a multi-year USAID Administrator's initiative to launch an irreversible revolution in the sustainable provision of Information and Communications Technology (ICT) services to rural areas, partnering with both international and local private-sector interests. The initiative seeks to transform the development prospects of farmers, small businesses, new startups and others through ICT-driven increases in productivity.

To better serve this project Unitelsa has been negotiating and renewing interconnection agreements with all the operators in Guatemala. However during the process, Unitelsa found out that the some Mobile Operators deny equal and non-discriminatory terms and conditions, violating what is clearly specified in the CAFTA-DR agreement.

Description of Discriminatory Terms and Conditions

Various mobile telecom operators in Guatemala, specifically Telefónica Móviles Guatemala, S.A. (a wholly owned subsidiary of Telefonica, S.A. of Spain), have been executing interconnection agreements with other operators and new entrants that are inconsistent with the terms and provisions of the CAFTA-DR trade agreement.

The inconsistency in question is that the CAFTA agreement guarantees non discriminatory terms and conditions to all operators ([http://www.ustr.gov/assets/Trade Agreements/Regional/CAFTA/CAFTA-DR Final Texts/asset upload file498 3933.pdf](http://www.ustr.gov/assets/Trade%20Agreements/Regional/CAFTA/CAFTA-DR%20Final%20Texts/asset_upload_file498_3933.pdf)), but the mobile companies are executing interconnection agreements forcing the signing operators to waive their right to access on equal and non-discriminatory terms and conditions (<http://www.sit.gob.gt/sit/Telefonia/contratos/TELEFONICA-BNA.pdf>).

Such inconsistency was made public by the SUPERINTENDENCIA DE TELECOMUNICACIONES DE GUATEMALA – SIT (local regulator), when they posted online (<http://www.sit.gob.gt/sit/Telefonia/orl/contratos.asp>) some of the interconnection agreements executed between telecom operators in Guatemala after the CAFTA-DR agreement entry into force.

The action to make publicly available the interconnection agreements in the SIT webpage was urged by the Office of the United States Representative (USTR) upon their 2007 Review of the operation and effectiveness of the U.S. telecommunications trade agreements (http://www.ustr.gov/assets/Trade_Sectors/Telecom-E-commerce/Section_1377/asset_upload_file213_11066.pdf).

CAFTA-DR Violations by Telefónica

Under CAFTA-DR suppliers of public telecommunication services, such as Telefónica must comply with strict access to and use of Public Telecommunications Services on a reasonable and non-discriminatory terms and conditions. Obligations imposed by Article 13.2 of CAFTA-DR Telecommunication Chapter.

Specifically, Article 13.2 requires that each Party “...shall ensure that enterprises of another Party have access to and use of any public telecommunications service, including leased circuits, offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions...”

Also, CAFTA-DR guarantees that all Operators in Guatemala have access to interconnection with the other suppliers, specifically Article 13.3 imposes “...Obligations Relating to Suppliers of Public Telecommunications Services Interconnection:

(a) Each Party shall ensure that suppliers of public telecommunications services in its territory provide, directly or indirectly, interconnection with the suppliers of public telecommunications services of another Party.

(b) In carrying out subparagraph (a), each Party shall ensure that suppliers of public telecommunications services in its territory take reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end-users of public telecommunications services and only use such information for the purpose of providing those services.

(c) Each Party shall provide its telecommunications regulatory body the authority to require public telecommunications suppliers to file their interconnection contracts...”

Furthermore, the unilateral and discriminatory actions of Telefónica in Guatemala, could affect product pricing for the “Last Mile Initiative” program of the USAID in Tecpan (a rural area in Guatemala), to the point of making it unattainable to the

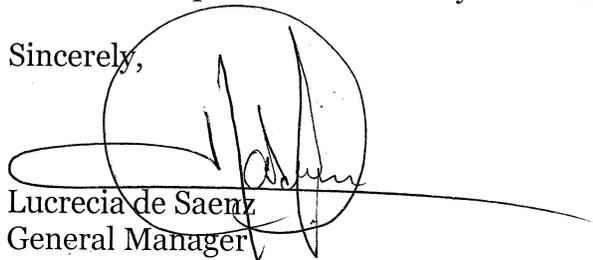
intended recipients, jeopardizing the effectiveness of the United States aid to Guatemala and the interests of any other potential American telecom investment. It also jeopardizes future investments and purchases of American made equipment and services by Unitelsa and its subsidiaries.

It is clear that Guatemala has repeatedly failed to comply with its international obligations under CAFTA-DR. Telefónica has consistently violated non-discriminatory access and interconnection rights guaranteed under CAFTA-DR Telecom Chapter 13 without the SIT or any other Guatemalan authority taking any steps or legal actions to stop such practice and enforce the obligations signed by Guatemala in such international agreement.

Unitelsa hereby respectfully requests the USTR to investigate this situation in Guatemala and to monitor the efforts to ensure that the reasonable and non-discriminatory terms and conditions in the interconnection agreements are available in Guatemala in the manner required by the CAFTA-DR Telecommunications Chapter.

We encourage USTR to work with Telefonica and the Guatemalan Government Agencies, including SIT, to immediately achieve this result as an effective regulatory authority with the powers necessary to ensure compliance with CAFTA-DR obligations and commitments and minimize barriers of entry in telecommunication markets and ensure a competitive and healthy environment for all participants.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lucrecia de Saenz', is written over a circular stamp. The signature is fluid and cursive, with a long horizontal stroke extending to the right. The circular stamp is partially obscured by the signature and the text below it.

Lucrecia de Saenz
General Manager