

February 8, 1999

Ms. Magalie Salas  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

**Re: Comment on Telmex/Sprint Corporation's Response to the Commission's Order to Show Cause, IB Docket No. ITC-97-127**

Dear Ms. Salas:

On behalf of the Competitive Telecommunications Association ("CompTel"), I am submitting this letter in response to the FCC's *Public Notice* (DA 99-123) of January 8, 1999. The *Public Notice* seeks comment on the Response of Telmex/Sprint Communications L.L.C. ("TSC"), filed December 23, 1998, to the Commission's *Order to Show Cause* in the above-referenced proceeding. This letter focuses solely on the issue of whether the Commission should take additional actions in this proceeding due to the lack of "pure" switched resale opportunities in Mexico today.

With respect to the issue of switched resale, there can be no serious doubt that Mexico has not lived up to the expectations relied upon by the Bureau in the Section 214 authorization issued to TSC, and that the Commission can and should impose additional conditions and/or safeguards based on this failure. The Bureau issued its October 30, 1997 *Order, Authorization and Certificate* ("*TSC Order*") based in part on its finding that "Mexico can be reasonably expected to allow the provision of 'pure' switched resale services in the near future." *TSC Order* at ¶24. The Bureau made clear, however, that it would revisit this issue if its expectations did not prove true:

"In the event that Mexico does not take the necessary actions to permit "pure" switched resellers to operate in the near future, we reserve the right to revisit this issue to determine whether TSC's authorization should be revoked or, alternatively, whether TSC's authorization should be subject to additional conditions and/or safeguards."

*Id.* Consequently, the Commission can and should revisit this issue and subject TSC's authorization to additional conditions and/or safeguards because Mexico still does not permit "pure" switched resellers to operate in Mexico. In fact, with respect to "pure" switched resale, nothing has changed since October of 1997 when the Bureau found that "Mexico does not currently offer non-facilities-based U.S. carriers the ability to provide 'pure' switched resale services." *Id.*

TSC's discussion of the status of the adoption of regulations to allow "pure" switched resale competition in Mexico in its Response to the *Show Cause Order* is both unsatisfactory and inaccurate. TSC first explains that the "timing of Cofetel's adoption of Mexican resale regulations and the issuance of resale permits is a matter for the Mexican Government that is beyond TSC's control." *TSC Response* at 17. This response, however, is beside the point. The Bureau reserved the right to impose additional conditions and/or safeguards not based on a confused belief that TSC had the ability to issue resale regulations, but rather on the necessity to verify the information about Cofetel's future actions that TSC itself had placed on the record to obtain Section 214 authority. The Bureau relied on TSC's representation "that [resale] regulations are likely to be published, and resale permits granted, in the near future," and placed TSC on notice that it would revisit the issue should the predicted actions not occur. *TSC Order* at ¶24. TSC cannot now complain when the Commission revisits the issue based on the continued entry barriers in Mexico for "pure" switched resellers.

TSC then claims that it continues to "understand that the Mexican Government remains committed to allowing switched resale in the near future," even as it backpedals by explaining that "the 'near future' is a relative concept." *TSC Response* at 17. The only support TSC offers to support this claim is its assertion that Cofetel has again placed "the formulation of the studies necessary for the issuance of resale rules" on its 1999 Workplan, which amounts to nothing more than a suggested agenda, just as it had in its 1998 Workplan. *Id.* at 17-18. CompTel respectfully submits that this is an inadequate basis now, as it has been in previous years, for gauging when if ever Mexico will permit Mexican and foreign-owned carriers to engage in "pure" switched resale.

Finally, TSC asserts that "substantial resale already is occurring in Mexico" and explains that "[c]arriers wishing to enter the Mexican market via resale, and to build facilities later, are free to apply for concessions and commence operations solely through resale." *Id.* at 18. TSC fails, however, to note that in order to obtain a concession in Mexico, applicants must agree to make significant infrastructure investments and coverage commitments, which are legally binding. Although concessionaires may provide limited resale services while they are constructing their networks,<sup>1</sup> "pure" switched resale has always been, and still is, illegal in Mexico. When the Bureau reserved the right to impose additional conditions and/or safeguards on the TSC authorization after grant, it made clear that it expected Mexico "to permit 'pure' switched resellers to operate in the near future," not merely to allow facilities-based carriers to provide limited resale services pursuant to a concession. *TSC Order* at ¶24. In fact, CompTel submits that with respect to "pure"

---

<sup>1</sup> See Letter dated November 24, 1998 from Douglas W. Schoenberger, Government Affairs Director of AT&T, to Magalie Salas, FCC Secretary, at 3 (describing Mexican resale regulations).

Ms. Magalie Salas  
February 8, 1999  
Page Three

switched resale services, it is undisputed that Mexico has made no real progress since the Bureau issued the *TSC Order*.

Therefore, for the foregoing reasons, CompTel submits that the Commission should take the actions necessary to ensure that new entrants have a full opportunity to provide "pure" switched resale in Mexico. On a route, such as the U.S.-Mexico route, where there is an enormous traffic volume between two contiguous countries whose business communities and populations already are inextricably commingled, the ability to originate traffic on both sides of the border is a key factor in being able to compete on either side of the border. As the Commission knows from its own experience, many carriers are effectively excluded from the Mexican market because they are not able to enter only on a resale basis. Those carriers will find it difficult if not impossible to compete against the U.S. arm of Telmex's bilaterally integrated business operations in the United States and Mexico.

Although CompTel does not believe that TSC's Section 214 authorization should be revoked at this time, the Commission should consider leveling the playing field by imposing a condition on TSC's Section 214 authorization that would forbid TSC from providing "pure" switched resale service to any customers it was not serving as of the date of the Commission's order until Cofotel has both issued regulations allowing "pure" switched resale and authorized U.S. carriers to provide such services. In this way, TSC could continue to provide uninterrupted service to its current customers, but could not obtain any further unfair competitive advantage on this unique telecommunications route. Not only would such a condition be appropriate to promote the U.S. public interest, it would provide the necessary incentives to encourage the Mexican authorities to issue switched resale regulations and allow U.S. providers to enter the U.S. market.

Respectfully submitted,

Carol Ann Bischoff  
Vice President,  
Legislative and Regulatory Affairs  
COMPETITIVE TELECOMMUNICATIONS  
ASSOCIATION