

DatZap, LLC, of Akron, Ohio,  
Presents this Chronological Transcript  
Detailing its Pursuit of  
Licensing to Provide Satellite Internet Service  
in Costa Rica under CAFTA-DR

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## Introduction and Purpose

Mr. Donald W. Jacobs, a businessman from Akron, Ohio, was first drawn to Costa Rica in 2003 by its deep-sea fishing and tropical climate. Already having built a successful business providing satellite broadband Internet to residential, commercial and governmental customers throughout North America and the Caribbean, Mr. Jacobs was excited to learn that the Central America Free Trade Agreement - Dominican Republic (CAFTA) would open Costa Rica's telecommunications market to private U.S. businesses. He recognized the opportunity to expand his existing U.S. based businesses into Costa Rica under the terms of CAFTA, which industry was dominated by a government-owned monopoly. Having had much success in this industry, expanding his business into Costa Rica seemed like a reliable investment opportunity, with access to the market protected and guaranteed under CAFTA.

This Chronological Transcript presents the experiences during Mr. Jacobs' pursuit of licensing to provide satellite Internet service in Costa Rica under the terms of the CAFTA telecommunications provisions, which, as of the date of this Transcript, Mr. Jacobs' business has been unfairly denied. From 2009 through 2011, Mr. Jacobs kept detailed records of communications with Costa Rican governmental officials (directly and through legal counsel in Costa Rica and the United States) and others directly involved in supporting Mr. Jacobs' efforts.

As you will see, the Costa Rican government has violated CAFTA by, among other things, failing "to protect investors from one Party against unfair or discriminatory government actions when they make or attempt to make investments in another Party's territory." Several Costa Rican government agencies share culpability in these violations, which include:

- o Costa Rican law exhibits a lack of understanding of the minutiae of satellite technology, and unfairly excludes businesses not adhering to its flawed regulations.
- o The Costa Rican telecommunications regulatory agencies, which require all companies intending to provide communications services in Costa Rica to obtain formal concession, still, to date, lack a procedure for reviewing and authorizing private businesses to provide telecommunication services

via satellite, such as satellite Internet service.

- o Despite supposedly being ended by CAFTA, Costa Rica's government-owned telecommunications providers continue to effectively enjoy the country's telecommunications monopoly, including in telecommunication services provided via satellite, while apparently being excused from complying with the stringent, and often erroneous, licensing regulations that private businesses are subject to.

Mr. Jacobs desires to make the public aware of the damage to U.S. business resulting from free trade agreements (FTAs), such as CAFTA. The experiences detailed herein serve as a real-life example for the need that future FTAs include stronger protections for business investments to be benefitted thereby, rather than the meaningless and illusory protections contained in CAFTA.

This document is a statement of experience solely for the purpose to inform legislators and fellow entrepreneurs of one company owner's experience and is not an attempt to discredit any individual(s) or agenc(ies) involved.

### Datzap

Preparing to enter the Costa Rican satellite Internet market, Mr. Jacobs created, Datzap, LLC doing business in Costa Rica as TicoSAT. Datzap is a value-added reseller of satellite Internet service provided by a related company (VSAT Systems, LLC), which owns and operates a satellite Internet teleport and network in Akron, Ohio. VSAT Systems' network provides Internet service to over 1,300 customers in North America, including many remote businesses, first responders and safety organizations (e.g., Police, Fire and EMS).

### Background on Costa Rican Telecommunications

While CAFTA inspired international goodwill, the combination of Costa Rican resistance to foreign entrepreneurs and the strength of indigenous business influenced or controlled by dynastic families made maintaining unfair business conditions in Costa Rica relatively easy. These forces have prevented private

businesses' from participating in Costa Rica's satellite telecommunications markets.

Costa Rican telecommunications evolved much like the rest of Costa Rican industries: dominated by a few families that gained wealth in the 19th century from their interests in coffee production and export, and overshadowed by a legacy of American domination in other business areas. In 1871, Costa Rica contracted with an American to build a railroad to transport coffee up the coast. Costa Rica subsequently defaulted on their loan, and transferred 800,000 acres along the railroad to the American contractor. The American planted bananas to feed his workers, but soon found that developing banana plantations and selling the fruit in the United States was a very lucrative business. Throughout the 1900s, successor companies, which owned fruit plantations throughout Central America, extended their reach beyond bananas and into other industries such as telegraph, radio and local politics.

In the 1940's, when there was a strong demand for change, Jose Figueres rose as a leader, modernizing government administration and improving Costa Rica's economic structure. Expansion grew with the opening of public banks, allowing private interests to realize and benefit from Costa Rica's market expansion.

The Costa Rican government also wished to enhance the country's technological development and created several agencies to oversee that growth. To more advance electricity and communication throughout the country, in 1949, the government created the Instituto Costarricense de Electricidad, or ICE (pronounced as EE-SAY in Spanish). ICE was Costa Rica's only official telecommunications provider at that time and was able to quickly narrow Costa Rica's technological gap with other countries.

Now, Costa Rica has built one of the largest and most advanced economies in Central America and is the U.S.'s largest trading partner included in CAFTA.

#### CAFTA Ends ICE's Monopoly

Being Costa Rica's sole telecommunications provider for the 60 years prior to CAFTA, resistance to ending the government-owned monopoly was strong. But Costa Rica committed to ending its monopoly and open its telecommunications market to competition from private businesses, effective January 1, 2009, on a non-discriminatory and even playing field.

Pursuant to CAFTA, Costa Rica created the Superintendencia de Telecomunicaciones (SUTEL), a supposedly independent agency whose mission is to ensure "efficiency, equity, continuity, quality, more and better information, and better alternatives in the provision of telecommunications services." SUTEL is the technical regulator of Costa Rica's telecommunications industry providing information and opinions to the authorizing agency, the Ministerio de Ambiente, Energia y Telecomunicaciones (MINAET). Further, communication frequencies are regulated according to Costa Rica's Plan Nacional de Atribución de Frecuencias, or PNAF, an executive decree adopted by MINAET.

Nonetheless, even after CAFTA became effective, ICE, along with another government-owned provider, RACSA, remained the country's sole telecommunications providers. While ICE and RACSA were not exempt from obtaining licensing to operate under CAFTA, neither was forced to seek authorization to operate or curtail its operations in anyway while the Costa Rica telecommunications regulators delayed the regulatory framework for an open telecommunications market. The government-owned providers' apparent freedom from the regulatory and application process is an unfair business condition and contradicts the fair playing field between domestic and foreign companies that CAFTA sought to establish.

#### January - May 2009: No Application Procedure Established

When Datzap first attempted to apply for a license to provide satellite Internet service in early 2009, there was no application process in place. In fact, when Datzap first inquired, an application form was not even available. Datzap encountered much confusion between SUTEL and MINAET for several reasons, including lack of technical knowledge and insufficient staffing. MINAET is the highest authority overseeing Costa Rica's telecommunication market. SUTEL was established as the technical regulator with the ability to grant authorizations, administer the process, and provide technical reports to the executive (i.e., MINAET) with regards to the concession and permits for the operation of telecommunication networks.

Very quickly, it became apparent that Costa Rica had failed to take the necessary steps prior to January 1, 2009 to open its telecommunications market to private service providers when CAFTA became effective, despite the clear

directive that licensing be made available no later than this deadline.

On March 6, 2009, Datzap's counsel submitted a Report of Trade Barrier to the U.S. Department of Commerce, Trade Compliance Center complaining that it could not obtain an application for a license to provide Internet service in Costa Rica. The U.S. Department of Commerce responded with contact information for Walther Herrera, a SUTEL Board Member. Datzap's Costa Rica attorney contacted Mr. Herrera, who provided a form application to be filed with SUTEL. Based on SUTEL's instruction, Datzap filed its first application to provide satellite Internet service with SUTEL in May 2009.

#### June - October 2009: Nineteen Companies Granted Authorization are Just ICE Resellers

After waiting months to hear more of the concessions being granted, speculation began about 19 other businesses that were granted authorization to provide telecommunication services. Datzap took an interest into why other businesses were able to begin providing Internet service while Datzap was mired in paperwork and formalities (such as advocating for the amendment of incorrect administrative regulations). Further research revealed that Datzap was the only company wishing to sell their own satellite Internet service, without tying into ICE's network.

While other companies had been granted an authorization to offer Internet service to the public, they were not granted a concession to operate their own network. These authorization holders were permitted to simply resell Internet via Wi-Fi originally provided by ICE. Thus, these companies essentially could only act as middlemen, purchasing Internet access from ICE and reselling it to consumers. This only reestablished that ICE's government monopoly still existed, thereby violating CAFTA.

#### September 2009: SUTEL Technical Report Identifies Conflicting Telecommunications Laws

Despite later claiming it had no record of Datzap's application, SUTEL issued a letter to MINAET on September 19, 2009 regarding Datzap's application for the requested concession. SUTEL identified a few areas where PNAF

differed from Datzap's proposed operation, resulting from PNAF regulations that were inconsistent with established international regulations.

Not only was the government just beginning the foundation work for Costa Rica's telecommunications market, but Costa Rica's laws and regulations conflicted with those provided by the International Telecommunication Union (the United Nations' agency for information and communication technologies; ITU). This inhibited the entrance of DatZap and other private companies into the telecommunications market.

The ITU regulations designated the KU-band (frequency range 10.7 GHz to 14.5 GHz) for fixed satellite service in Region 2, which encompasses the Americas including Costa Rica. DatZap uses Ku-band frequencies 11.7 to 12.2 GHz for the downlink and 14.0 to 14.5 GHz for the uplink, over geostationary satellites. However, as enacted by MINAET, PNAF restricted the frequency range from 11.7 to 12.2 GHz to non-geostationary satellite usage and 14.05 to 14.5 GHz for direct broadcast satellite service only. Since direct broadcast satellite service was limited to services where every customer receives identical communications, such as satellite radio or TV, Datzap's service would not qualify for a concession since customers receive different communications based on the specific customer's requested content (e.g., website or email, etc.). This limitation resulted from a typo in PNAF stating 'and' instead of 'or'.

Additionally, SUTEL insisted that the requested concession was subject to a public bid process according to PNAF. However, lacking the necessary technical knowledge, MINAET failed to recognize that many providers could operate in the KU band without interference, meaning the public bid process was unnecessary.

These errors identified in SUTEL's report, resulting from conflicts between PNAF and the accepted ITU regulations, could not be corrected quickly. As part of an executive decree, these frequency restrictions were legally binding administrative regulations. The only way to correct PNAF is through a formal amendment, which is a drawn out process with the need for public notice and a comment period.

SUTEL's report also informed MINAET of ICE's allegations that a related Costa Rican corporation was making illegal sales. Datzap became concerned that these unsubstantiated and prejudicial accusations would lead to the rejection of Datsap's concession by MINAET.

## October - November 2009: Datzap Changes Tactics

After seeing the negative report that SUTEL submitted to MINAET, Datzap decided a different approach was needed. More information was needed about both the continually changing licensing process and the cited public bid procedures. Datzap undertook a more detailed review of Costa Rica's General Telecommunications Laws and PNAF. This review confirmed the public bid process and direct broadcast satellite restrictions cited by SUTEL were, in fact, included in PNAF, but were technically incorrect based on the well-established ITU regulations. Costa Rica had effectively precluded satellite Internet providers operating in the Ku-band from its telecommunications market by enacting technically erroneous regulations. Had MINAET simply copied the ITU regulations correctly, these errors would not have occurred.

Moreover, through this review, Datzap discovered that it had applied to the incorrect agency, despite being instructed by SUTEL in March to file its application with SUTEL. Unfortunately, SUTEL is only the technical regulator and not authorized to grant frequency concessions - MINAET held this authority. Therefore, Datzap should have filed its application with MINAET, not SUTEL. Based on SUTEL's incorrect and misleading instruction, Datzap would lose approximately 1 year in the application process.

Datzap started to consider more options as it was becoming more apparent that it was being forced out of the market and given misleading information, even considering whether to file an action in Costa Rican court challenging the actions of MINAET and SUTEL and compelling them to comply with CAFTA. However, Datzap was advised that such an action would move very slowly and was unlikely to yield a favorable result considering, among other things, ICE's substantial influence in Costa Rica.

## December 2009 - January 2010: Datzap Weighs Options

At this point, it seemed like Datzap had two viable options available to make progress in changing the current frequency laws. The first option would be to file an opposition to SUTEL's technical report with MINAET and hope that MINAET disagreed with SUTEL's interpretation of PNAF and granted the requested concession. However, challenging the technical regulator's opinion could be viewed as too confrontational and may have resulted in negative

repercussions. The second, and possibly more beneficial option, would be to request a formal interpretation from SUTEL and MINAET of the erroneous regulation (note CR 098) restricting access of a portion of the Ku-band to direct broadcast satellite service. This would provide the agencies with a way to communicate a specific point without confrontation. This could lead to favorable interpretation of PNAF, and possibly an amendment of the regulation.

Datzap also needed to determine how it would handle the fact that its application was currently pending with SUTEL, the incorrect Costa Rican agency.

#### January 2010: Mobile Phone Market Opens with Ease Under CAFTA

With staggered deadlines set forth by CAFTA, Costa Rica was required to open its mobile telephone market on January 1, 2010. Due to obvious popularity and wide-spread use of cell phones, this received much more press and attention than Costa Rica's failure to open its Internet market to private satellite Internet providers, such as Datzap. Nonetheless, the mobile phone market, however, was promptly opened.

SUTEL outlined a two-step process for companies to gain access to the mobile market. The second step would include an economic offer as a bidding process. The monetary demand is due to the fact that only one operator could operate in a frequency block for cellular phones. This is not a concern for the Ku band where multiple providers can operate on a frequency without interference. The prospect of having to make large investments in order to provide Ku band access was not tenable. Although Datzap would expect a different concession process than that for the mobile phone market, this problem was yet another example that the Costa Rican government was deliberately working slowly in allowing private businesses to provide satellite services, while other, more complicated markets were opening relatively quickly.

#### February 2010: Government-Owned Providers Update Satellite Network

Costa Rica's delays allowed the government-owned providers, ICE and RACSA, to expand and improve their satellite Internet service. Specifically, ICE and RACSA

added capacity to provide an updated VSAT Internet service - the same service offered by Datzap - to 1,000 new sites using Gilat's SkyEdge II broadband satellite network. RACSA used this expanded capacity to provide service to 500 corporate and business customers, while ICE used the remaining capacity to provide service to 500 rural customers. These are the very same customers Datzap would have marketed its service to, had it been authorized to provide service.

This was a huge advantage to Costa Rica's government-owned providers, allowing them to secure several long-term contracts with Costa Rica's largest businesses without competition, including several large customers that previously expressed interest in obtaining service from Datzap. ICE and RACSA used this additional time to update and expand its satellite Internet service, thereby greatly reducing the available market if Datzap is ever permitted to begin providing service.

#### February - March 2010: DatZap Seeks New Costa Rican Law Firm

With no progress being made, and disappointed with its counsel handling of Datzap's first application, Datzap sought new Costa Rican counsel with specific experience in telecom licensing and stronger political influence to speed up the application process. After looking into three firms, Mr. Jacobs chose a firm that was currently representing other satellite companies also seeking satellite concessions and familiar with the PNAF provisions discriminating against Ku-band satellite operators. The firm's involvement with other companies' applications meant they had active experience working with MINAET and SUTEL.

Quickly, Datzap's new counsel outlined a game plan for addressing this situation. First, PNAF needed to be amended to: (1) designate the Ku-band as a non-exclusive frequency, meaning the public bid process would no longer be applicable; and (2) correct the typo limiting a portion of the Ku-band to broadcast satellite service. Working with other satellite applicants, Datzap's new counsel was already preparing to file comments in favor of these amendments. Then, after PNAF was amended, Datzap would request that SUTEL transfer its concession application filed in May 2009 to MINAET.

Additionally, Datzap's new counsel confirmed that the application process to be able to provide satellite

Internet service to the public was a two-step process. First, Datzap needed to obtain a direct concession (i.e., a concession to operate in a non-exclusive frequency) from MINAET allowing it to send and receive satellite communications in the Ku-band. Second, Datzap would need an authorization to offer Internet service to the public - essentially, an authorization to act as a common carrier. Nonetheless, Datzap's new counsel estimated that the entire process - amending PNAF, and obtaining a concession from MINAT and an authorization from SUTEL - would take approximately 6 months.

#### April 2010: PNAF Amended

At this time, MINAET was in the process of amending PNAF to, among other things, correct the erroneous frequency allocations with respect to the Ku band. SUTEL recommended the establishment of "non-exclusive assignment" of mobile operators' frequency ranges devoted to microwave links, which had been previously licensed to ICE and affiliated companies. SUTEL recognized that microwave links were the primary choice for the connection of mobile access networks, because they are the most effective and cost-efficient option. The non-exclusive allocation of microwave frequencies would enable joint use by ICE as well as new mobile operators, but would not interfere with ICE's current operations. Currently, these frequency bands could only be assigned to operators, both current and incumbent, through a concession that has been granted through a public bid process. Although primarily focused on regulations pertaining to mobile telephone operators, the amendment would also classify the Ku-band as a non-exclusive frequency and remove the broadcast service limitation in note CR098.

The amendment to PNAF was prepared by late March, but delayed waiting for President Arias approval and further action. The controversy surrounding the amendment concerned the effect that the amendment would have on some concessionaries, such as ICE. These concessionaries opposed the proposed amendment to PNAF threatening to challenge the amendment in Costa Rica's Constitutional Court if enacted.

This controversy led to further delays, when President Arias decided to hold up execution of the amendment. This postponement would continue until both SUTEL and MINAET could resolve their disagreement over which frequencies

would be affected by the amendment. SUTEL was in favor of only amending regulations pertaining to the microwave frequencies needed to connect mobile base stations to the cellular towers throughout the country, while MINAET proposed a complete amendment to PNAF.

On April 23, 2010, Costa Rica finally enacted Executive Decree 35866-MINAET amending PNAF. The amendment was intended to optimize the exploitation of "the radio electric spectrum as a public domain resource," seeking optimal conditions for competition within the mobile market. Among the changes, this Amendment designated the KU-band as a non-exclusive frequency, free from the public bid process, and corrected note CR 098 such that it no longer was limited to broadcast satellite service. This was viewed as major progress in terms of Datzap's quest to enter the Costa Rican telecommunications market. Unfortunately, this would prove to be deceiving as nearly a year and a half later, Datzap would be in the exact same position - waiting for PNAF to be amended to correct more erroneous technical errors.

#### PNAF Amendments Affect How DatZap Would Seek Concession

SUTEL was now required to create a procedure for allocating these non-exclusive satellite bands within the next six months - by October 22, 2010. This pushed SUTEL, but also meant another half-year of delays for Datzap. This underscored the fact that Costa Rica was still not ready to truly open its telecommunications market as it committed to under CAFTA and meant ICE and RACSA would continue to enjoy their monopoly. As ICE and RACSA were actively expanding and improving its satellite service, this would continue making it more difficult to build a successful business in Costa Rica to compete with the government-owned juggernauts.

Additionally, Datzap needed to determine how its application pending with SUTEL would be treated. The vagueness of where Datzap actually stood in the application process also meant there was little knowledge of how many more postponements would occur. Datzap planned to request that its application filed with SUTEL in May 2009 simply be transferred to MINAET, the agency to whom the application should have been submitted. Accordingly, Datzap's Costa Rican counsel scheduled a meeting with the Vice Minister of Telecommunications to discuss the issues with Datzap's

application and clarify how much longer DatZap would wait for a decision.

May 2010: Datzap Secures Additional Satellite Spectrum Specifically to Provide Service to Costa Rican Customers

With PNAF amended and licensing to begin providing service on the horizon, Datzap entered into a long-term lease for spectrum on Telesat's T-11N satellite, which required a significant investment. Prior to this time, Datzap and its related entities used Telesat's T-14 satellite to service customers in Central America, as the T-14 satellite was a dual satellite covering both United States and Costa Rica markets. On the other hand, the T-11N satellite only covered Central America and was designated specifically for Datzap's customers in Costa Rica. Service on T-14 was given up in order to accommodate new focuses in Central America and Costa Rica, even though it provide superior coverage in the U.S. market compared to the T-11N satellite. Nonetheless, the new satellite would allow Datzap to offer improved service in Costa Rica.

The transition cost Datzap \$40,000 USD to re-point existing customers after the satellite switch. Many customers were also lost in the switch. Further, Datzap was now obligated to pay \$44,000 USD per month for satellite coverage dedicated for Costa Rican customers, showing its commitment to expanding into Costa Rica's telecommunications market.

May 2010: CR Agencies Lose All Record of Datzap Application; Force Datzap to Start Application Process Over

The results of Datzap's counsel's meeting with the Costa Rican agencies were not good. Curiously, Datzap was informed that neither SUTEL nor MINAET had any record or documentation of Datzap's application the technical report that SUTEL issued to MINAET in September 2009.

Instead of wasting any more time investigating what happened to its first application, Datzap decided to simply file a new application with MINAET. Since all the pertinent information and documents were assembled for the first application, Datzap was able to prepare the application relatively quickly. Datzap submitted its second application to MINAET on May 17, 2010.

May - June 2010: Supplemental Information Promptly  
Provided to MINAET and SUTEL

As a part of the application process, SUTEL is required to issue a technical opinion to MINAET recommending whether or not the application should be granted. In order to complete this technical evaluation, SUTEL would need further information concerning the specifics of Datzap's operations and the equipment to be used by Datzap customers. Accordingly, Datzap submitted technical information regarding the antennas, plates, set-top box receivers (STBs), and manufacturer information to Vice Minister Vega on May 25, 2010. The report included specifications for the iDirect 3000 satellite router, the Ku-band four Watt transmitter, or block up converter (BUC), the Ku-band receiver, or line noise block (LNB), and the Andrew 1.2m RxTx Class II Antenna System.

Also, SUTEL requested a copy of the contract between Datzap and the satellite service provider showing Datzap was authorized to resell the satellite service and a detailed description of the frequency ranges that would be used in accordance with ITU regulations - specifically, 11.7 to 12.2 GHz for uplink and 14.0 to 14.5 GHz for downlink, as clearly specified in Datzap's application. Datzap was given a one week deadline to comply with SUTEL's request.

Datzap promptly submitted the requested information on June 10, 2010, six days before the June 16, 2010 due date. This included a Value Added Reseller Agreement between Datzap and VSAT Systems, allowing Datzap to sell Internet services using VSAT Systems' network, and the specific frequency ranges used by Datzap on the T14 and T11N satellites.

On the same day, Datzap's local counsel met with MINAET's technical and legal teams, including the Manager of Concession and Permits, to discuss the current status of Datzap's application. MINAET was still waiting on a written response from SUTEL clarifying certain technical issues pertaining to the recent PNAF amendment. SUTEL was in the process of conducting a complete study in order to adjust the current nonexclusive frequencies and implement a systems for monitoring and recording interference. The following week, Datzap's local counsel met with SUTEL's President concerning the information MINAET needed. SUTEL's President informed Datzap that the response was nearly

ready, simply needing a few minor details to be finalized, and could be presented to MINAET in the next 48 hours.

MINAET provided Datzap's counsel with information indicating that the application process was moving forward, and that they had specifically requested that SUTEL render its technical opinion regarding Datzap's application. It appeared the application process was progressing and that SUTEL's technical report would be issued shortly, thereby allowing MINAET to grant Datzap the requested concession to operate in the Ku-band.

#### July - August 2010: MINAET and SUTEL Fail to Agree on Interpretation of PNAF Amendments

MINAET was pressuring SUTEL to deliver its technical reports on the pending direct concession applications, which was necessary before the application procedure could move forward. Through various meetings with MINAET and SUTEL officials, it became clear that MINAET and SUTEL had opposing views on the procedure for granting direct concessions. However, both agencies were focused almost exclusively on the mobile spectrum bidding process and, citing insufficient staffing, the satellite spectrum issues, including Datzap's concession application, were receiving little to no attention.

In response to MINAET's pressure, SUTEL submitted a letter to MINAET explaining its opinion regarding the appropriate procedure for granting direct concessions. SUTEL took the position that the direct award procedure must comply administrative procurement procedures and formalities, and must follow the same steps the direct contracting procedure. SUTEL even suggested that the General Controller's Office (CGR) should endorse direct concessions. SUTEL also opined that certain conditions set forth in the recent PNAF Amendments must be fulfilled prior to any direct concessions being granted, including SUTEL's satellite spectrum report due in October.

According to MINAET, and Datzap's local counsel, SUTEL's new position had a debatable legal basis, which presented many problems for Datzap and would cause additional delay. For instance, the CGR did not need to endorse a concession for nonexclusive spectrum allocation, as this is contradictory to the Costa Rica's administrative contracts regulations. Moreover, SUTEL's position that certain technical reports/studies authorized by PNAF must be fulfilled prior to any direct concessions being granted

also seemed incorrect. This evoked concern that if MINAET followed SUTEL's position its actions would be subject to court challenges, due to the high degree of legal uncertainty. MINAET and SUTEL's differing opinions on the process to follow led to procedural uncertainty, highlighting the lack of inter-institutional coordination and undermining the procedure set forth by MINAET.

On July 15, 2010, in response to SUTEL's recent opinion concerning a new procedure for nonexclusive frequency allocations, Datzap filed a writ requesting that MINAET issue its final resolution of this process in order to grant Datzap a concession to operate in the 11.7 to 12.2 GHz and 14.0 to 14.5 GHz spectrum bands. The writ also included a request that any other proceeding which SUTEL and MINAET jointly agreed upon would only be applicable to future applicants, excluding organizations, such as Datzap, who already applied under the process previously set out by MINAET.

Nonetheless, SUTEL's opinion was given weight because it would not require the additional authorization to act as a common carrier providing services using the nonexclusive frequencies. At this time, Datzap feared that the flaws in SUTEL's opinion would lead to several lengthy appeals and objections. Accordingly, its counsel met with the Vice Minister of Telecommunications to clarify the course of action MINAET planned to take. The Vice Minister confirmed that MINAET disagreed with SUTEL's procedure, and would continue to support the prior process that they outlined and that Datzap was adhering to. However, as MINAET's technical counterpart, Datzap was informed that the two agencies would work together to achieve a practical solution and resolve the current conflict.

By mid August, MINAET had yet to issue a determination on Datzap's application, as it appeared the agencies were quibbling over minor regulatory issues to intentionally delay opening Costa Rica's telecommunication markets to private service providers offering satellite services. Despite requesting that MINAET and SUTEL reach a final resolution on the procedure for granting direct concessions, no progress was being made and Datzap was informed that the process would be further delayed. Clearly, Costa Rica was continuing to violate CAFTA by discriminating against Datzap and other satellite providers by disputing the proper procedure for granting direct concessions, which was required to be completed by January 1, 2009 and which the government-owned providers were not subjected to.

August - October 2010: DatZap Reaches out to United States Department of Commerce

While Datzap's Costa Rican counsel was pushing MINAET and SUTEL to speed up the application process and reach a resolution on the procedural standards, Datzap decided to reach out to United States authorities once again. Through its attorneys, Datzap previously made an anonymous Report of Trade Barrier to United States Department of Commerce, which received little attention. But these excessive delays led Datzap to submit an updated account of the situation to resurrect its Report of a Trade Barrier. The updated Report also identified potential contacts at MINAET and SUTEL for the Department of Commerce to contact. Datzap hoped that the United States' involvement would speed up the implementation of a procedure to approve direct concessions for satellite Internet service. The Updated Report of Trade Barrier was submitted to the United States Department of Commerce on August 3, 2010.

Andrew Bennett, an Analyst with the United States Department of Commerce's Office of Technology and E-Commerce, contacted Datzap's United States attorneys concerning the Updated Report of Trade Barrier. Mr. Bennett, the International Trade Administration's telecomm expert for the Western Hemisphere, informed Datzap that his office was aware of several gaps in the regulatory framework in Costa Rica's telecommunication regulations, but this was the first he had heard any problems specific to the satellite area. Mr. Bennett put Datzap's attorneys in contact with the United States Trade Representative's office, who would continue to pursue this issue.

The matter was referred to Catherine Hinckley, Director of Telecom and E-commerce Trade Policy for the United States Trade Representative (USTR), who contacted Datzap's attorneys on September 3, 2010. Through her work on trade agreements, Ms. Hinckley was frequently in contact with Costa Rica's Trade Representative (COMEX) responsible for Costa Rica's compliance with CAFTA. She was curious as to why Datzap was applying for a concession, as this was generally not necessary for Datzap's type of service in Central America, and began investigating Costa Rican telecommunication law to determine the necessary steps for Datzap to provide satellite Internet service in Costa Rica. Still unknown to the United States agencies, Datzap felt it was time to reveal its identity to the USTR. Further, Ms. Hinckley, who planned to raise this issue with the Costa

Rican agencies in hopes of resolving the matter, believed it would be beneficial to disclose Datzap's identity so that the USTR could address Datzap's specific situation. Datzap authorized the USTR to reveal its identity at the risk of being blacklisted in Costa Rica. With no real progress being made in the second year of the application process, support from the home front to put pressure on expediting the granting of the concession was needed and welcomed.

In October 2010, the USTR raised Datzap's specific issue with COMEX and SUTEL to facilitate Datzap's entrance into Costa Rica's telecommunications market.

#### October 2010 Deadline Passes with No Agreement

Datzap's Costa Rican attorney was following MINAET and SUTEL's progress on establishing the direct concession procedures, as the October 22, 2010 deadline for SUTEL satellite spectrum report neared. According to Vice Minister Vega, MINAET was working with SUTEL to define the procedure for granting direct concessions, although few specifics were provided about the procedure(s) being considered by MINAET and SUTEL. By this time, Datzap was extremely pessimistic that MINAET and SUTEL would be able to establish a comprehensive, detailed and definite procedure for direct concession applications. If the two Costa Rican agencies could not agree, MINAET would need to consult with the Procuraduria General de la Republica.

The deadline for SUTEL to complete its satellite report passed without SUTEL and MINAET reaching an agreement on a procedure for the granting of non-exclusive frequencies, such as the Ku-band. Datzap was informed that the delay was mainly due to concerns with respect to the allocation of cellular frequencies, which was irrelevant to the satellite concession Datzap was seeking. Nonetheless, due to inconsistencies concerning completely different frequency ranges, Datzap's entrance into the Costa Rican market would be further delayed.

#### November 2010: USTR Discovers More Technical Errors in PNAF

The USTR, while reviewing PNAF's details pertaining to satellite operations in the Ku-band, discovered another erroneous regulation, note CR093, which stated that the

11.7 to 12.2 GHz frequency range was allocated to fixed service provided via non-geostationary satellites. The regulation was technically incorrect, as it should have allocated the frequency range to fixed services provided via geostationary satellite, as non-geostationary satellites operate in the Ka band, not the Ku band. Again, a blatant technical error, resulting from MINAET's lack of knowledge concerning satellite operations and inability to simply follow the ITU regulations, could delay Datzap obtaining the required concession to provide satellite Internet service in Costa Rica.

Additionally, the USTR suggested that Datzap submit comments as part of the USTR's annual Section 1377 Review concerning compliance with telecommunication trade agreements, which would increase visibility of Datzap's situation. Datzap followed the USTR's advice and submitted a synopsis of the delays experienced through early 2011.

#### December 2010 - February 2011: More Broken Promises and Delays from SUTEL

In December 2010, SUTEL informed Datzap's Costa Rican attorney and the USTR that its technical opinion concerning Datzap's application was complete and only needed a final review from its legal and regulatory teams. SUTEL promised Datzap's Costa Rican attorney that this letter would be issued to MINAET by December 10, 2010, even sharing SUTEL's opinion with Datzap's attorney. This draft raised the same technical error in PNAF note CR 093 - allocating spectrum range 11.700 GHz to 12.200 GHz to non-geostationary satellite service - that the USTR had discovered, but suggested that MINAET could correct this error automatically through an executive agreement based on the ITU standards and clearly erroneous nature of the regulation.

However, SUTEL failed to issued its technical opinion to MINAET by mid-December 2010, as promised. Then, the Costa Rica agencies went on vacation beginning December 22, 2010 for the Christmas and New Year's holidays. Upon returning, SUTEL indicated that its technical opinion would be issued in mid-January, but again failed to do so. Then, in late-January, SUTEL indicated that further revisions to its draft technical opinion were necessary. SUTEL wanted to send MINAET a clear technical message sent to prevent further back and forth discourse. Datzap was curious as to

why a clear technical message had not been contained in the previous drafts of SUTEL's technical opinion.

By February, the application process had completely stalled, again, and it appeared as though Datzap would have to wait through a second amendment to PNAF to correct the erroneous CR 093 note. Through prior experience, Datzap knew this process would take several months at a minimum, as amending an executive decree requires official publication followed by a public comment period.

The two-year anniversary of Costa Rica's deadline for opening its Internet market had passed with Datzap in the exact same position as a year ago - waiting for a technically incorrect PNAF regulation to be amended, which was preventing Datzap from being issued a concession to provide satellite Internet service. However, there was little Datzap could do to expedite the process, as it was in regular contact with both the USTR and the relevant Costa Rican agencies.

#### Delays Underscore Need for U.S. Federal Assistance

It was now early 2011, over two years after Costa Rica committed to opening its telecommunications market, and the Costa Rican agencies had made no progress in opening its market to telecommunication services provided via satellite. The official SUTEL technical report concerning Datzap's application was not yet submitted or complete. For several months, Datzap and the USTR were continuously told this report would be issued within a few days or weeks, but delay after delay continued. These persistent delays and false promises confirmed that Datzap was in need of more aggressive intervention from the USTR, as the time for cordial diplomatic encouragement had long passed.

In February 2011, Ms. Hinckley elevated Datzap's situation within the USTR by involving her supervisor, Andrea Malito. Ms. Malito is the Director for Central America and the Dominican Republic at the USTR.

Shortly thereafter, pressure from the U.S. seemed to be heating up, as SUTEL informed Datzap's Costa Rican attorney that it had been contacted by the U.S. Embassy and USTR regarding Datzap's situation. However, SUTEL's delay tactics did not stop, as the USTR continued to receive the same meaningless assurances that the process was moving forward, despite the lack of any actual progress.

### March 2011: Datzap Determined to Continue Communications

Datzap was advised that the best path to follow to gain entrance into Costa Rica's market was to continue fully cooperating with the Costa Rican authorities, yet pushing them to quicken the pace. Datzap put faith in the USTR, even though it had become clear that the Costa Rican agencies were purposefully postponing the opening of its telecommunications market to privately-owned satellite service providers.

Datzap suspected that progress could be made if all three parties discussed how Datzap's application would be processed. So, it submitted a written request to MINAET and SUTEL asking them to meet with Datzap and its counsel. Even though it was unlikely that the two Costa Rican entities would agree to meet with a private party, Datzap could only hope that the Costa Rican agencies would see this as a pressing matter and accept the meeting to discuss how the situation could be resolved.

Further, Datzap also extended an invitation to COMEX to attend the proposed meeting as Costa Rica's agency with ultimate responsibility for ensuring CAFTA is implemented. Based on the USTR's suggestion, Datzap planned to raise the possibility of a temporary or provisional authorization being granted, allowing Datzap to begin providing service while MINAET and SUTEL determined the proper regulatory framework.

### March 17, 2011: SUTEL Finally Issues Technical Opinion

After months of delays, SUTEL finally issued its technical opinion to MINAET, however, the report failed to specifically address Datzap's application. Instead, SUTEL merely set forth its opinion on how satellite frequency allocations should be managed generally.

First, SUTEL stated that Costa Rica had taken an improper approach to issuing satellite concessions, even prior to CAFTA becoming effective. This opinion caused Datzap to question whether the concessions allowing government-owned providers ICE and RACSA were proper.

Further, SUTEL opined that the satellite operator is the party who is required to obtain the frequency allocation, while the company providing service to end users, such as Datzap, merely needed an Administrative Authorization allowing them to provide their service (e.g., Internet service) using the satellite operator's network.

This change in approach seemed to be good news because a concession generally carries more burdensome compliance obligations than would be required of an authorization holder. However, to be granted an administrative authorization, Datzap had to confirm that the satellite it was to use was coordinated with ITU guidelines and requirements and, accordingly, provided MINAET with a letter from Telesat (Datzap's satellite operator) certifying the satellite's registration and coordination with ITU.

Further, in SUTEL's opinion, Article 30 of the General Telecommunications Law should have a set of bylaws (executive decree regulations) regarding the operation of satellite networks, so that the network operators could simply adjust to a procedure for obtaining the required concession, thereby allowing the licensed networks to operate in Costa Rica.

Although a vastly different approach than previously advanced over the last two-plus years, the new approach seemed beneficial as Datzap's attorney believed the administrative authorization could be based on Datzap's pending application with MINAET. So, SUTEL's new approach should not have caused any further delays.

#### SUTEL Opinion Must Be Validated; MINAET Accepts Meeting With Datzap

Before Datzap could act on SUTEL's technical report, MINAET needed to accept the approach set forth therein. If validated, Datzap would be required to follow the new procedure set forth by SUTEL, including converting its application to an authorization request.

Further, SUTEL and COMEX informed Datzap that they would not be participating in the requested meeting with MINAET due to prior engagements.

Further, MINAET accepted Datzap's request for a meeting, which was scheduled for March 25, 2011 to be held at MINAET's San Jose office. Vice Minister Vega, Edwin Estrada, MINAET's spectrum manager, planned to represent MINAET at the meeting. Both SUTEL and COMEX informed Datzap they were unable to participate. Nonetheless, Datzap was looking forward to discussing SUTEL's new approach and whether MINAET would be amenable to issuing a temporary/provision authorization to Datzap.

March 25-31, 2011: Meeting seems Productive as MINAET and Datzap Agree on Action Plan

Datzap met with MINAET on March 25, 2011, and a clear action plan was developed. First, MINAET discussed the possibility of granting Datzap a temporary authorization to provide satellite Internet service in Costa Rica. Vice Minister Vega explained that they found legal authority in Costa Rica's Public Sector Statute to issue such a temporary authorization. As explained, the process for granting a temporary authorization required MINAET and Costa Rica's President to issue an Executive Decree establishing temporary authorization for satellite operators. Then, SUTEL would have the authority to grant an authorization to satellite service provider applicants, such as Datzap, to begin providing service. The entire process was to take no more than three months.

Apparently, MINAET and SUTEL officials were going to meet on Tuesday, March 29, 2011 to discuss such a solution. The Vice Minister preferred to have SUTEL on board, although it was not necessary for SUTEL to agree as the legal authority was held by MINAET. The temporary authorization discussed would be valid for five years, but could be revoked by the Costa Rican government at any time.

Vice Minister Vega also addressed the extended period of time that the Datzap application had been pending. Not only did she recognize that it was being processed in an untimely fashion, but acknowledged Costa Rica's blame and disclosed that MINAET was feeling the pressure. At the conclusion of the meeting, the Vice Minister promised to provide a formal report to Datzap by March 31, 2011 advising how MINAET planned to move forward with the process of issuing a temporary authorization to Datzap.

In the days following the meeting, Datzap's Costa Rican attorney followed up with COMEX and MINAET. COMEX indicated that (1) MINAET agreed with SUTEL's recent technical report and (2) SUTEL agreed with MINAET in the legal procedure for granting a temporary authorization.

However, MINAET failed to provide the promised formal report by the end of March and optimism that Datzap would be permitted to provide service shortly once again appeared doubtful.

April - May 2011: USTR Releases Section 1377 Report;  
MINAET and SUTEL Abandon Temporary Authorization

On April 7, 2011, the USTR released the results of its annual review of the operation and effectiveness of telecommunications trade agreements (aka Section 1377 Review). The 1377 Report identified unfair barriers facing U.S. telecommunication service providers. Datzap's situation in Costa Rica was specifically addressed stating, in part:

[Datzap] complains that it has been attempting to obtain a license to provide Internet services via satellite in Costa Rica for nearly two years, and has encountered serious delays... Under its CAFTA-DR commitments, Costa Rica committed to issuing licenses for Internet services [no later than January 1, 2009].

[SUTEL] has indicated that there are a number of technical issues that need to be resolved in order to grant an authorization to [Datzap] and others that have applied for the right to supply Internet via satellite in Costa Rica. These technical issues include those related to spectrum fees, international coordination of the satellite to be utilized, and changes needed to Costa Rica's table of frequency allocation. While it may take some time to work through these technical issues, Costa Rica has said that it is considering implementing a transitory framework that will allow the company to obtain a license and begin operations pending the finalization of the technical details.

Given that [Datzap]'s license application has been pending for more than two years, USTR believes Costa Rica must act expeditiously to grant authorization (including, if necessary, a temporary authorization) to the company while SUTEL and the telecommunications ministry (MINAET) seek to resolve any outstanding issues regarding Internet services provided via satellite.

The USTR was advancing the same resolution that Datzap and MINAET previously discussed during their meeting at the end of March.

Datzap was becoming very nervous, as MINAET had still not provided a formal report despite multiple requests from Datzap's attorney. In response, the Vice Minister did provide minutes from meetings between MINAET, SUTEL and COMEX held on March 28 and 29 where satellite authorizations, and Datzap's specific situation, were discussed. It appeared from these minutes that all three agencies were on board with moving forward with the issuance of a temporary authorization.

However, it was now mid-May and the three month process to issue a temporary authorization had not been started as far as Datzap and its attorney could tell. Instead, Datzap's attorney, who had been monitoring the issue with MINAET and SUTEL on a regular, often daily, basis, was receiving informal reports that MINAET and SUTEL no longer agreed that a temporary authorization was appropriate and were revisiting their positions. SUTEL was backing away from the opinion set forth in its technical opinion issued in March that satellite operators (not service providers) were required to obtain a concession and the service providers merely required an authorization. Now, SUTEL was contending that service providers also needed a direct concession, consistent with the procedure already taken by Datzap who had been seeking a concession for over two years, but to no avail.

By the end of May 2011, Datzap was informed that MINAET and SUTEL decided to completely abandon the procedure under consideration and take a completely different approach. Both agencies now agreed that PNAF needed to be amended to correct the erroneous CR 093 note prior to any applicant being issued a satellite concession. Further, MINAET refused to act until SUTEL submitted a new technical report consistent with this new approach, thereby changing its opinion set forth in the March technical report.

This was consistent with Costa Rica's actions thusfar - raise roadblocks as to why Datzap could not become licensed to provide service, then when it finally appeared Datzap had overcome those roadblocks, change approaches and erect new roadblocks.

#### Datzap Considers Investor-State Arbitration

With no signs of Costa Rica's continuing breach of CAFTA ending, DatZap began considering more proactive approaches to make progress in Costa Rica. Specifically, Datzap was exploring an investor claim against Costa Rica for

violating CAFTA as provided for in Chapter 10 of CAFTA. In order to pursue such a serious claim, Datzap sought advice from Washington D.C. attorneys experienced in international arbitration. Very quickly, it became clear that Datzap needed extensive support for its claims, even though its claims were very strong, in order to justify the significant cost of an investor-state arbitration, which could be \$1 million USD or more. Datzap needed to establish that it suffered substantial damages over the past two-plus years resulting from Costa Rica's violations of CAFTA.

First, Datzap assessed its damages resulting from potential customers known to have an interest in Datzap's service deciding to purchase satellite Internet service from ICE or RACSA. For example, Datzap's sales representative in Costa Rica had previous discussions with at least three large Costa Rican businesses that were prepared to subscribe to Datzap's service as soon as it was licensed. Unfortunately, these businesses could no longer wait for Datzap to obtain licensing to legally provide service and agreed to long-term contracts with RACSA. It was estimated that these three customers would have resulted in \$75,000 - \$100,000 of monthly revenue.

Additionally, Datzap anticipated easily establishing that it would have secured a large share of the Costa Rican market had Datzap been permitted to begin advertising and providing service in early 2009. A critical fact supporting a large market share was, in 2009, ICE's satellite service was inferior to Datzap's. However, Costa Rica's delays in opening its telecommunications market had allowed ICE and RACSA to update their network and improve their service in February 2010.

Lastly, Datzap would seek to recover the substantial investments actually incurred in relying on Costa Rica's failed commitment to open its telecommunications market. Mainly, this included the recurring monthly expense for satellite bandwidth that had gone unused and substantial professional fees incurred in its repeated attempts to obtain legal authorization to provide service in Costa Rica. Unfortunately, relying on CAFTA and the good people of Costa Rica had caused Datzap to waste over \$500,000 in investments in preparing to enter the Costa Rican market.

Datzap's biggest hurdles with commencing an arbitration action are the significant investment in a reputable law firm and the continued delay waiting for the case to be determined, which could take up to 3 years. As previously stated, it was estimated that Datzap's legal fees and costs for such bringing such an action could be \$1 million USD,

or more. Ultimately, the significant legal fees and costs make an investor-state arbitration action very difficult for a small business like Datzap.

Notwithstanding, in discussions with the USTR regarding an investor-state action, concerns were raised that initiating a formal international trade dispute would chill Costa Rica's cooperation and further delay Datzap's entrance into the market. Taking such an aggressive action against the Costa Rican government would almost certainly strain the relationship with Datzap, making it less likely that Datzap would be permitted to begin providing service during the pendency thereof. An investor-state action is a risky move considering the significant efforts necessary to support Datzap's damages, the substantial fees and costs, and possible government backlash.

#### USTR Reluctant to Enforce CAFTA Regulations to Protect US Business

In discussions with the USTR, Datzap also asked the USTR about the U.S. bringing a state action against Costa Rica under CAFTA. Apparently, the U.S. has never brought a dispute resolution or investment action under any of its free trade agreements against one of its trade partners (although the U.S. has initiated World Trade Organization claims). The USTR insisted it was best to resolve the issue through traditional diplomatic channels and continued encouragement, without bringing an action under CAFTA. A formal action against Costa Rica would be reserved as final resort. But, at this point, the USTR would give Costa Rica a chance to respond and provide a report concerning the status of Datzap's situation, even stating that Costa Rica is afforded a reasonable time to comply (i.e., establish the appropriate regulatory framework) even after the January 1, 2009 deadline in CAFTA.

From Datzap's perspective, the USTR should have been prepared to take more affirmative action to compel Costa Rica to open its telecommunication market to private companies, in order to ensure the protections and benefits for U.S. businesses, such as Datzap, supposedly guaranteed under CAFTA. However, the USTR went so far as to suggest that Datzap was somehow culpable for being so insistent that Costa Rica timely comply with its CAFTA obligations. It seemed clear the USTR would avoid an international trade disruption at all costs.

### DatZap Seeks Senator Portman's Assistance

Frustrated with the USTR's unwillingness to take meaningful action to protect Datzap's right to enter Costa Rica's market, Datzap contacted Ohio Senator Rob Portman for assistance on May 4, 2011. Having been the United States Trade Representative when CAFTA was approved, Senator Portman would presumably be very interested in ensuring the free trade agreement he negotiated, and boasted as very beneficial to U.S. business, was being honored - especially since Costa Rica's failure to comply in this case was costing Ohio jobs. Datzap hoped a United States Senatorial influence would accelerate the otherwise stationary authorization process.

Datzap presented its struggles in gaining entrance into Costa Rica's telecommunications market to Senator Portman's staff. The Senator's office was interested in Datzap's situation and began exploring how they might become involved to help Datzap, including quickly contacting the USTR in support of Datzap's efforts. Datzap hoped the Senator would use his clout to insist that the USTR take more aggressive action, as an outspoken supporter of free trade and advocate for Ohio jobs.

Surprisingly, Senator Portman's office seemed to have a very mild influence with the USTR, apparently agreeing with the USTR's wait-and-see approach.

### June 2011: Datzap's Frustration Peaks

Datzap had wasted considerable time and money in attempting to gain entrance into Costa Rica's telecommunications market, including traveling to San Jose to meet with MINAET in-person. It was now two and a half years after Costa Rica committed to opening its telecommunications market, including having any licensing procedures in place, if necessary, but SUTEL and MINAET had failed to even settle on the type of license needed or the procedure for granting such a license. Instead, confusion and discrepancy over regulatory policy continually led to delays in opening the market to satellite service providers, such as Datzap.

Datzap had experienced the same pattern of inconsistency and endless delays for over two years, but this time the USTR was witness. The USTR had now been involved in this situation for nine months, without any progress being made.

In fact, Datzap remained in the identical position that it was in December 2009 - unable to provide service, and waiting for MINAET to amend PNAF to correct technically erroneous regulations and clarify the application process resulting from MINAET's own incompetence.

Accordingly, Datzap demanded another meeting with MINAET and COMEX to discuss, among other things, the reason MINAET abandoned the solution discussed at the meeting in March and where the application process would move from here. The previous meeting between Datzap and MINAET had been held in San Jose, but this time Datzap was hoping to host the meeting in Washington D.C. Datzap was informed that it was very unlikely the meeting would be accepted, since it is not customary for a private party to request the presence of a governmental agency, but Datzap was unwilling to waste more time and money traveling to Costa Rica just to hear more of MINAET's empty promises. Further, Datzap believed its request was justified under Article 10.15 of CAFTA, which states that "In the event of an investment dispute, the parties should initially seek to resolve the dispute through consultation and negotiation." Datzap previously met at MINAET's headquarters. So now, it expected the Costa Rican agency to reciprocate.

Datzap also hoped that a USTR representative would attend the meeting to witness first hand the inconsistencies and false promises being told by the Costa Rica agencies. Datzap believed its exclusion from the Costa Rican market for over two years should have been seen as a priority of the USTR. However, the USTR responded that it was not appropriate for the USTR to be involved in such a meeting between a trade partner and a private U.S. investor. This reaffirmed that the USTR was not willing to take any action beyond simply encouraging Costa Rica to comply with its CAFTA commitments that Costa Rica had been breaching for two and a half years now.

As expected, Datzap received a response on June 7, 2011 from COMEX refusing to meet with Datzap in Washington D.C.

### Datzap Is Neglected

Contacts in both Senator Portman's office and the USTR seemed to be neglecting Datzap when requested that they continue to apply pressure to MINAET and SUTEL. In fact, the USTR in particular seemed very frustrated by Datzap's outspoken insistence that Costa Rica immediately comply with its CAFTA obligations stating that Costa Rica had a

reasonable time to establish the required regulatory framework and licensing procedure. When asked to help Datzap by providing a timeline of the USTR's efforts, the USTR suggested that Datzap review its own records and undertake an independent evaluation, as if Datzap was at fault for being adamant that Costa Rica honor its commitments.

This lack of support shocked Datzap. Both the USTR and Senator Portman promoted free trade, and CAFTA in particular, but refused to aid this small business who was being unfairly denied the protections U.S. investments were supposedly guaranteed. The unwillingness to take any meaningful action to defend Datzap's rights and compel Costa Rica to comply with CAFTA was extremely disappointing and unacceptable.

#### June - July 2011: SUTEL Updates Technical Report, Recommending further Amendments to PNAF; Timeline Established

Revising its earlier report issued in March, SUTEL issued another recommendation to MINAET that PNAF's regulations concerning the use of satellite frequencies for the provision of telecommunications services must be amended. The proposed amendment would correct the technical errors contained in PNAF with respect to the Ku-band.

Shortly thereafter, the Costa Rican agencies provided a timeline for Datzap to be granted a direct concession authorizing it to begin providing service in Costa Rica. Consistent with SUTEL's report, the first step was to amend PNAF and Costa Rica's General Telecommunications Law. Next, SUTEL would provide guidance on the requirements for obtaining a direct concession. Additionally, SUTEL would begin a study of frequency interference. Finally, SUTEL would make technical recommendations for each applicant, with direct concessions being issued by January 23, 2012. Although the timeline was portrayed as a worst case scenario, it would not take long for the Costa Rican agencies to fall behind schedule.

#### September 2011: Delays Experienced

During the beginning of September, Datzap was informed that Costa Rica was experiencing delays in amending PNAF. Further, SUTEL fell behind in providing the requirements

for the issuance of a direct concession. Although only a few weeks behind schedule, these delays reinforced Datzap's concern that Costa Rica will once again fail to comply with its self-imposed deadlines, further delaying Datzap's entrance into Costa Rica's telecommunications market.

Now, SUTEL has requested additional information from Datzap regarding its operations. Datzap will provide the requested information quickly and request that MINAET act immediately on Datzap's application, prior to the completion of SUTEL's frequency interference study that is estimated to take up to three months according to Costa Rica's timeline. Based on its experiences with Costa Rica over the past three years, Datzap is justifiably pessimistic that the Costa Rican agencies will comply with their current timeline by issuing Datzap a direct concession by January 23, 2012. Nonetheless, even if permitted to begin providing service in January 2012, Costa Rica will have avoided its CAFTA obligations by extending its government-owned monopoly for more than three years, thereby causing substantial damage to Datzap.

Unfortunately, it is unlikely that Datzap will ever recover from the damage caused by Costa Rica's CAFTA violations.

### Conclusion

Datzap has relentlessly pursued access to Costa Rica's telecommunications market for nearly three years now, but to no avail. Even before the January 2009 deadline, Datzap began preparing to provide satellite Internet service in Costa Rica. Datzap's owner and President was led to believe CAFTA would ensure free trade in Costa Rica and the investments by his U.S. small business would be protected.

Unfortunately, Datzap learned the difficult lesson that free trade is never truly guaranteed. In relying on the USTR's assertions that CAFTA would secure and protect U.S. investments, Datzap invested hundreds of thousands of dollars to expand operations into Costa Rica - including securing a significant satellite lease, purchasing equipment and paying professional fees. Furthermore, while Datzap was excluded from Costa Rica's telecommunications market, the government-owned telecommunication providers, ICE and RACSA, continue to expand their market share through enjoyment of favorable treatment and an illicit monopoly.

While providing some good lip service, the USTR has fallen well short of that required to realize the benefits of CAFTA in this case. Datzap expected that because CAFTA was claimed as such a huge victory for the U.S., that the USTR would have welcomed the opportunity to help a U.S. small business when such blatant violations occurred. Unfortunately, when the opportunity arose, the USTR failed to do so, merely encouraging Costa Rica to honor its commitments.

This experience has proven that without meaningful enforcement mechanism, or a willingness to actually enforce its rights, free trade agreements actually damage U.S. business and investments. This is especially true of small businesses, like Datzap, that have limited resources to take advantage of the insufficient enforcement options available to investors under free trade agreements, such as CAFTA. Instead, Costa Rica has shown that U.S. trade partners can simply evade their commitments for years, while continuing to benefit from the U.S.'s compliance with the agreement, effectively forcing the U.S. business to fold prior to any benefits being realized - all the while, the USTR will only write letters encouraging the trading partner to comply.

Let Datzap's experience serve as a cautionary tale for U.S. investors wishing to take advantage of the protections and guarantees supposedly ensured by "free trade" and for U.S. lawmakers considering future free trade agreements containing no, or severely deficient, enforcement mechanisms.