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Via E-mail and U.S. Mail

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Re: FTC/DOJ Hearings on the Implications of Competition and Patent Law and Policy

Dear Counsel:

Please accept this letter as a follow-on submittal by the American National Standards Institute (ANSI) in connection with the FTC/DOJ Hearings on the Implications of Competition and Patent Law and Policy. We would like to commend and congratulate your agencies on having spearheaded these extensive hearings on very complex issues in a very comprehensive and professional manner. We also would like to thank you for involving ANSI and its members, particularly with regard to the issues that arise when patented technology is incorporated into standards.

As you know, we submitted formal written comments with specific regard to the April 18, 2002 session entitled "Standards-Setting Practices: Competition, Innovation and Consumer Welfare". We would like to confirm that, at the conclusion of the entire set of hearings, our viewpoints as expressed in that testimony have not changed. With all due respect for the FTC and DOJ and their scope of expertise, it is ANSI's position that it is unnecessary for the U.S. government antitrust enforcement agencies to issue guidelines relating to the use of patented technology in standards. ANSI's position in this regard is based on the view that current standards-setting activity is successful and pro-competitive. In addition, it is not clear whether the full implications of any guidelines on international

standards-setting activities have been fully explored and are fully understood. Further, guidelines could not effectively address all of the varied types of standards-setting activities in all of the industries in which standards are being developed using patented technology. Finally, the adoption of guidelines may result in unintended negative consequences that would make standards-setting activity less efficient and more costly.

We also respectfully suggest that, in the event that the FTC and DOJ decide to issue a public statement as a result of the hearings that would have a direct impact on standards-setting organizations or those who participate in standards-setting activities, the FTC and DOJ consider seeking comments from affected interests with regard to such a statement. ANSI believes that the formulation of any such statement may have an effect on standards-setting activities, including in the international arena, and we believe it is important to take interested parties' views into consideration before finalizing and formally publishing such a statement.

Thank you again for your time and attention to these issues.

Regards,

Amy A. Marasco