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December 21, 2007

Via Electronic Mail to [FR0717@USTR.EOP.GOV](mailto:FR0717@USTR.EOP.GOV)

Ms. Gloria Blue  
Executive Secretary, Trade Policy Staff Committee  
ATTN: Section 1377 Comments  
Office of the U.S. Trade Representative  
600 17th Street, N.W.  
Washington, DC 20036

Dear Ms. Blue:

On behalf of the Telecommunications Industry Association (TIA), I appreciate the opportunity to express TIA member company views of the effectiveness of trade agreements affecting the provision of telecommunications products and services. Obtaining greater access in foreign telecommunication equipment markets is one of TIA's priorities.

TIA represents providers of communications and information technology products and services for the global marketplace through its core competencies in standards development, domestic and international advocacy, as well as market development and trade promotion programs. The association facilitates the convergence of new communications networks while working for a competitive and innovative market environment. TIA strives to further members' business opportunities, economic growth and the betterment of humanity through improved communication.

This submission references the following agreements:

- World Trade Organization (WTO) Agreement on Basic Telecommunications (BTA) and the associated reference paper
- WTO General Agreement on Trade in Services (GATS)
- WTO Information Technology Agreement (ITA)
- WTO Technical Barriers to Trade (TBT) Agreement
- North American Free Trade Agreement
- Pending United States and Republic of Korea Free Trade Agreement

Please see commentary about specific markets below.



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## **People's Republic of China**

At the outset, we note that there has been some improvement in the U.S.-China trade and investment relationship over the last several years. U.S. exporters and investors still see China as a key destination. U.S. exports of information and communications technologies (ICT) to China are increasing. One ICT product category, telecommunications equipment exports, has increased 17 percent from \$703 million in 2005 to \$826 million in 2006. However, we remain concerned about lack of progress in the several key areas.

### ***Telecommunication Services***

There has been little progress with respect to liberalization of the telecommunication services market in China. While a number of value-added services are technically open to foreign competition through joint ventures, to date MII has effectively blocked the foreign provision of value added services by maintaining high-entry barriers, both through its licensing authority and its ability to define narrowly the scope of services included in each value-added category. In addition, the process for reviewing and approving applications is opaque, discretionary and conducted with a conservative view that the listed services represent a ceiling, rather than a floor, for what MII is inclined to approve. Those foreign ventures in telecom services that do receive approval are subject to onerous restrictions, such as geographic limitations, which keep ventures from selling their services outside one city or even a single district of one city, and strict joint venture requirements, in which foreign joint venture participants may not bill customers directly for telecom services, control the billing process, or collect payment. They cannot provide assurances of service quality, and their ability to manage network security is severely constrained by a confusing legal regime centered on encryption technologies.

In addition to the market access barriers discussed above, China's \$260 million capitalization requirement for basic telecommunications services is a significant restriction for most companies. We are encouraged by China's commitment during the most recent JCCT to lower the capitalization requirement, and we will closely monitor China's compliance and implementation of this commitment. Other impediments to the provision of telecom services in China include regulatory ambiguity; inconsistent interconnection rights; restrictive personnel requirements, such as lack of representation by foreign boards of directors; and licensing restrictions for basic services.

With these impediments in mind, TIA urges the Chinese government to:

- Lower the capital requirement for investment in basic services;
- Eliminate or change the MII "Catalogue of Telecommunication Service Categories" such that every new service offering by foreign providers is not subject to review and approval by MII;
- Permit joint ventures to be established as "inter-provincial" value-added service enterprises;
- Permit joint ventures to manage the end-to-end customer experience, including billing;
- Permit joint ventures to hire qualified staff using clear qualification criteria, as opposed to using quotas from the two principals;
- Permit joint ventures to partner with Chinese investors other than the existing state-owned enterprise carriers;
- Comply with its Reference Paper commitments establishing an independent regulator.



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### ***Technology Neutrality***

TIA urges the Chinese government to subscribe to the principle of technology neutrality on the part of the regulator. We note that Chinese Vice Premier Wu Yi stated on April 11, 2006, that China would adopt a technology neutral approach in its 3G policy, and that in May 2007, MII approved the use of global wireless standards WCDMA and CDMA2000, in addition to China's homegrown 3G standard, TD-SCDMA. However, the Chinese government has not yet signaled when licenses will be issued or how many will be awarded. Accordingly, TIA reiterates its position that the decision to provide 3G services should be a commercial one, the regulator should be agnostic regarding technology choice, and that China's 3G policy, including timing and number of licenses be announced as soon as possible.

### ***Type Approval, Certification and Standards (Technical Barriers to Trade Agreement)***

**Factory Inspection:** TIA was informed that the China National Certification and Accreditation Administration (CNCA) has issued a new policy, which clearly indicates that in principle, all initial factory inspections should be conducted by the Chinese certification organizations themselves. Only under extreme circumstances (e.g., a delay in receiving the products would affect a major project in China) will CNCA allow the accredited certification organizations to subcontract the initial factory inspection to a foreign organization. This action creates serious delays for U.S. manufacturers in obtaining the CCC certificate, due to China's cumbersome internal approval process for overseas trips and related US visa process issues. (It often takes months to schedule visa interviews.)

**Certification:** We note that China has engaged within the Worldwide System for Conformity Testing and Certification of Electrical Equipment (IECEE) Conformity Body (CB) scheme for safety test report acceptance, which is essential for market access and to eliminating redundant testing of products at multiple laboratories. However, laboratories in China are not making the best use of these international programs, requiring additional samples and repeat testing, resulting in substantial delays. The product testing and certification process in China is significantly more difficult than in other markets, which increases the cost of imports. Additionally, we note that China has opted out of the CB scheme for electromagnetic compatibility (EMC) testing, resulting in mandatory domestic testing. EMC requirements emerged out of a collective international effort and most of the world participates in the EMC component of the CB scheme and accepts CB scheme test reports generated by other participating members. We encourage the Chinese government to improve the application of the IECEE CB Scheme by accepting CB Scheme reports by national laboratories and eliminating the need for additional samples and redundant testing. We would also welcome China's participation in the IECEE CB Scheme for EMC.

**Standards:** China has uneven and unclear requirements for inclusion of foreign-invested companies and institutions in technical committees that devise nationally adopted standards. TIA urges the Chinese government to publish a standard that indicates clearly how technical committees are constituted and who may participate, as well as the rights of participants. TIA recognizes that China has made significant strides to conform to their obligations under the WTO TBT Agreement to base their technical regulations on international standards. However, we are concerned that China continues to define "international standards" as only those developed in international forums like the ISO, IEC, and ITU. China's narrow interpretation and acceptance of "international standards" is inconsistent with the spirit of Annex IV of the TBT Agreement, and negatively affects many US and other global manufacturers that rely on international standards developed outside of the Geneva-based organizations. China is currently in the process of revising its "Standardization Law." We hope USTR will continue to reinforce the principles of the TBT Annex IV and encourage China's open consideration and acceptance of all globally relevant standards developed in accordance with the TBT Code of Good Practice.



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Recently, we have become concerned with mandatory standards for cell phone batteries, which China introduced earlier this year. While we support China's goal of protecting the environment and promoting consumer safety, we are concerned that the battery may in fact harm consumers and impede innovation in battery and handset development. TIA is working through its affiliate organization, USITO, in Beijing to voice its concerns to Chinese government officials, and will update relevant U.S. government agencies as the situation develops.

### ***Indigenous Innovation***

China's "indigenous innovation" policy was articulated in China's Five Year Program issued last year. The policy is inherently protectionist, and anecdotal evidence suggests that some U.S. companies have lost bids in China's government procurement process as a result of this policy. TIA is actively involved in this issue, supporting the U.S. Information Technology Office (USITO) in its efforts, which include developing position papers and letters, holding seminars and panel discussion throughout China, and meeting with government representatives. USITO's Indigenous Innovation white paper is being used as a platform for developing the agenda for an upcoming "Innovation Seminar," which will be held on the margins of the Strategic Economic Dialogue (SED) in Beijing in December.

### ***Imports and Import Discrimination***

China has met its commitments to the WTO Information Technology Agreement (ITA) by reducing tariffs on the great majority of ICT products to zero between the years 2002-2004. However, we urge the government to include Multi-Chip Packages (MCPs) in the products having zero-tariff status. MCPs are simply a more advanced form of integrated circuits, which already have received zero-tariff treatment.

With respect to import discrimination, in key telecommunications sectors, China continues to struggle with economic inefficiencies, exacerbated by preferences for domestic industries and pricing and procurement practices that discriminate against imports. Specifically, it appears that in some telecom procurements, companies are ignoring their published criteria for bid evaluation, resulting in the selection of "national" champions, which are state-invested enterprises. Because of these practices, importers are excluded from the market.

### **India**

TIA recognizes India's significant progress in unilateral liberalization of the telecommunications market. We note that India has emerged as one of the world's fastest growing ICT markets, with wireless and landline connections more than doubling over the past 3 years. As of Oct. 31, 2007, gross telephone connections reached 256.55 million. Government initiatives have played a significant role in this growth acceleration. The reduction of import duties has reduced handset costs and the government's campaign to boost penetration in poor areas has increased demand for infrastructure equipment. Keeping these positive trends in mind, we encourage further liberalization to further spur ICT, speed the development and adoption of new technologies, introduce new competition and promote multilateral collaboration. India is also in the process of accepting new wireless service providers in the Unified Access Service (UASL) arena. Finally, TIA is pleased that in June 2007 India's regulatory agency, the Telecommunications Regulatory Authority of India (TRAI), issued its notification on cable landing stations, which will require access to and interconnection with cable landing stations on non-discriminatory terms. The notification will become effective upon publication in the Official Gazette. Still unresolved as of November, 2007 are the discussions between the Department of Telecommunications (DoT) and mobile service providers to reach consensus on spectrum allocation issues. The DoT is faced with the decision to create new rules for the future



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spectrum auctions, as there is current uncertainty in the availability of spectrum and an ongoing fight between CDMA and GSM providers for the space.

### ***New Entrants in Unified Access Services (UASL)***

The Department of Telecommunications (DoT) has received 575 applications from 46 companies for licenses in its 23 service areas. The current process and pricing for UAS licenses was set in 2001 through a bidding process for a fourth cellular license when there were 4.2 million subscribers. Since then the market has changed dramatically, with a current mobile subscriber base of 217.14 million, as of October 2007, expected to reach 500 million by 2011 and 750 million by 2017. In its recommendations of August 28, 2007, TRAI clearly stated that there is a need to lay down a predictable path for the assignment of spectrum to new entrants. A public consultation by TRAI would allow diverse stakeholder comments to be included when setting a policy for assigning LoI/licenses/spectrum. A method other than one emerging from a TRAI consultation, which would allow for a fair, transparent and market based assignment of license/spectrum, would discourage private and international investment. It is important that due process and international best practices be brought into play. As these discussions have still been unresolved as of November 2007, we strongly propose the publication of a DoT reference paper specific to the introduction of new service providers, terms and conditions before setting the final policy for issuance of LoI/licenses/spectrum for applicants and new entrants.

### ***Access Deficit Charge (ADC)***

TIA applauds TRAI for significant changes to the ADC regime as it phases out the universal service plan by 2009. U.S. industry supports additional consideration of a proposed revenue share plan that would help address the gray market in international calling. The plan would remove the discrepancy between domestic and international termination rates; and make the system more efficient, equitable and non-discriminatory, by fairly applying costs to all industry players. We note that international operators have not yet benefited from the ADC reduction initiated in April 2007. Accordingly, we recommend that the Government of India reduce the ADC to zero by March 2008 on incoming ILD calls, while ensuring that ADC is not replaced by an unjustifiably high mobile termination charge (MTC); and ensure that reduction of the ADC reflects lower international settlement rates.

### ***Internet Protocol (IP) –Enabled Services***

Enterprises in India rely on next generation telecom infrastructure in the provision of their services. The growing use of IP-enabled services, capable of supporting a number of interactive voice and data applications, is of utmost importance to enterprises for controlling costs, improving efficiencies, and enhancing the customer experience. While other countries have lowered barriers to the use of the new technologies, India continues to maintain restrictions. For example, the revised guidelines permitting those operating domestic and international OSP (Other Service Provider) Centers to share infrastructure do not permit the same equipment to be used for international and national calls. A company that can transmit IP voice telephony over the leased domestic circuits that link its in-country locations cannot permit voice communications to be forwarded to an employee's home location or cell phone after hours because such interconnection with the PSTN is not permitted. Therefore, the requirement that companies must maintain separate systems for internal and external communications within India increases the cost of doing business in India. We continue to note that IP Telephony capable of interconnecting with the PSTN eliminates the requirement of users to have a dual-investment in infrastructure, allows enterprise users to realize enormous savings in the cost of moving telephones or adding telephones, and



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enables companies to achieve a higher rate of return on investment in customer premise equipment because a common infrastructure eases management of diverse applications.

We are encouraged that DOT formed a committee to periodically review regulations that fall outside the licensing regime. The committee has identified seven critical issues that impede the provision of BPO/outsourcing and other enterprise services, including VoIP. We are also encouraged by reports that the issue of VOIP liberalization would be considered after the phase out of the Access Deficit Charge in April 2008.

### *Licensing*

Several of the licensing conditions currently in place for an international long distance (ILD) and national long distance (NLD) license have not been modified to reflect policy considerations for the next generation of services and service providers. As presently written, many of the regulations cover policy concerns solely appropriate for mass-market consumer voice telephony, and not reflect data and IP services, or the considerations of business enterprise customers. For example, the entire suite of VPN services are now under the ILD license but there is no modification in the text to ensure compliance specific to these next generation services. In addition, the procedure for processing of applications for ILD and NLD licenses is unclear, with periods in which the basis for inaction is not apparent. We recommend that India explore the possibility of revisions to relevant areas in the ILD and NLD license; clarify and expedite license application processing times; and adopt reasonable licensing fee requirements.

### **Republic of Korea**

TIA applauds the completion of the Korea-U.S. Free Trade Agreement (FTA) earlier this year. TIA is pleased that the FTA contains strong language on technology neutrality, recognizing that competition and openly developed and transparent processes are important to ICT-sector growth and limiting conditions under which parties can specify technology. Telecom companies will benefit from other commitments, including commitments on access to and use of the public switched network, interconnection, number portability, resale of services, networking unbundling, submarine cable landing stations, regulatory independence and foreign direct investment. In addition, Korea has committed to signing phase 2 of the APEC MRA, which allows for mutual recognition of certification for telecom equipment. Many of these commitments go beyond Korea's World Trade Organization obligations. However, until the agreement is signed into law, we continue to raise the following concerns in the Korean market.

### *Technology Neutrality*

On a number of occasions in recent years, TIA and its member companies have commented on standards issues in Korea; specifically, government standards policy decisions we believe are designed to inhibit non-Korean competitors in the Korean market and advantage domestic companies. We remain concerned that the Korean Ministry of Information and Communication Industry (MIC) will continue to promote and require Korean technology at the expense of non-Korean competitors.

TIA supports innovation and market competition, and more important to our industry, policies that promote technology neutrality (also, "technology choice"), in which standards and products are developed by market-driven dynamics and open, transparent processes. We urge USTR to continue to press the Korean government to



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practice technology neutrality in the appropriate arenas, particularly in light of the ongoing US-Korea Free Trade Agreement.

### ***Certification***

In Korea, all products must be certified by a “national” (read domestic) certifier (e.g. KTL, KETI), and experience indicates that these bodies are not receptive to working with non-domestic entities. Restrictive testing and certification regimes are inconvenient, time consuming, and costly for all players, including Korean companies. The inability of U.S. companies to test and certify products directly for the Korean market means that US manufacturers have to re-test in Korea and utilize additional certification organizations. It is expensive to send samples to Asia and often manufacturers cannot get their products certified in a timely fashion resulting in millions of dollars in lost sales for U.S. companies. In today’s highly competitive and challenging global economy, it is more important than ever to minimize such impediments to the efficient flow of goods, while maintaining high levels of product safety.

### ***European Commission***

TIA and its member companies are concerned about the European Commission’s (EC) steps to impose duties on a variety of products covered by the Information Technology Agreement (ITA), potentially violating its ITA commitments. The ITA clearly covers one telecom-related product, set-top boxes (STBs); nonetheless, the EU threatens to reclassify most STBs out of the ITA duty-free classification and into higher duty-rate categories. While STB technology has evolved, TIA believes that additional functionalities, such as a hard drive or Ethernet modem, do not change the primary function of the device.

In some cases, the Commission has put in place temporary duty suspensions (TDS) in an effort to pacify challengers. However, TIA does not believe that a DS is a viable long-term solution, as several Member States are expected to oppose TDS. Moreover, as a trade policy matter, the EU is obliged under the ITA to provide “bound and eliminated” duty-free treatment for ITA items. Re-classification and imposition of the 14 percent duty violates WTO law, as well as EU and World Customs Organization (“WCO”) classification rules. Imposition of duties violates the EC’s ITA commitment to eliminate duties on STBs with communications functions, regardless of where they are classified in the Harmonized System; each of the categories of STBs that the EC proposes to re-classify is covered by terms of that Attachment B commitment. The imposition of duties would also violate Article II: 1 GATT by leading to “treatment less favorable” and duties “in excess of” what is provided for in that Schedule. Any temporary duty suspension the EC may be considering and that would reduce the duty back to zero percent on a less than permanent basis would not cure the underlying WTO inconsistency. Re-classification would risk leading to erosion of the ITA and could spillover to other products because of similar actions proposed by the EC.

### **Brazil**

#### ***World Trade Organization, Information Technology Agreement***

TIA encourages Brazil to join the WTO’s plurilateral Information Technology Agreement (ITA). This agreement removes tariffs on a broad range of ITA products, including telecom equipment products, reducing costs and stimulating demand. Zero tariffs contribute to the globalization of the industry, as manufacturers are able to



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import intermediate inputs at relatively low cost, manufacture-finished products and then ship to final consumers in markets around the world.

### ***Complexity of Tax System***

The inherent complexities of the Brazilian tax system pose numerous challenges to foreign companies that seek to increase their business with Brazil. The current taxation system discourages investment and development of the ICT industry in Brazil through too much complexity and one of the highest tax rates in the world on telecommunications services. Special attention should be given to tax disputes among the various states (including unconstitutional discriminatory taxes imposed by state governments), the transfer pricing guidelines, the multiple cascading taxes, the constant changes in the interpretation of tax laws and many other tax-related difficulties. As a concrete example of these difficulties, we can point to the series of restrictions imposed on the export and re-importation of imported equipment sent abroad for repairs. The requirements are so laborious and complex that companies face many restrictions in providing quality services to customers in Brazil due to significant delays in the export and re-importation process. There are currently several Congressional initiatives to reform the fiscal system.

### ***Protection of Intellectual Property (IP)***

Although Brazil has greatly improved its efforts to curtail counterfeiting, piracy and other illegal activities related to IP, we still encourage greater attention to the monitoring and protection of international intellectual capital in the legal disputes that take place within the Brazilian court system.

### ***Incentives to Local Manufacturing and R&D***

As part of several initiatives to provide incentives to local manufacturing and local R&D activities, the "Lei de Informática" has produced some favorable results for the country, when it comes to an increase in investments and the development of a competitive base of local infrastructure, intellectual capital and human resources. However, there is still some room for improvements. One specific item that deserves attention is the import and VAT tax incentives on lab and R&D equipment. Currently, setting up R&D operations in Brazil can be considerably more expensive than conducting R&D in other developing countries, such as India and China, due to the heavy tax on imported equipment. We believe a specific tax exemption for R&D related equipment would make investment decisions easier and lead to increased investment.

### ***Testing and Certification***

TIA is concerned about Anatel not accepting test data generated outside of Brazil, except in those cases where the equipment is too physically large and/or costly to transport. Therefore, virtually all testing for IT/Telecom equipment (including everything from cell phones to optic cables) must be physically done in Brazil. This requirement that testing be done "in country" limits our members' ability to service customers based on a "business case," in the interest of minimizing certification time and cost. We have also observed that it is becoming a common practice for Brazil to align with other Mercosur countries in harmonizing standards and creating regulations that affect product certification requirements and accreditation processes for certification organizations. While we see no problem with countries consulting each other on regulatory matters, we believe that if Mercosur partners are creating regulations en bloc, there should be a mechanism for United States organizations to comment on these regulatory decisions. Right now, we understand that there is no formal mechanism for the U.S. to weigh in on the Mercosur regulatory decision-making process. Finally, in the area of





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telecommunications equipment, we are increasingly seeing an emphasis on local certification. One recent example is the imposition of a stamp for cellular batteries. This labeling and testing requirement adds cost and delays time-to-market for products without improving safety, in particular as it relates to the “grey” market for batteries.

### ***Conclusion***

TIA strongly believes that it is important that the United States continue its efforts, both bilaterally and multilaterally, to bring about a fully competitive world market for ICT equipment. This can be accomplished through the enforcement and expansion of existing trade agreements, as well as the negotiation of new trade agreements.

If you have any questions about this document or if we can assist you in other ways, please do not hesitate to contact James Maday at (703) 346-3247 or [jmaday@tiaonline.org](mailto:jmaday@tiaonline.org).

Sincerely,

A handwritten signature in black ink that reads 'Grant E. Seiffert'. The signature is written in a cursive, flowing style.

Grant Seiffert  
President