



**Christopher Boam**  
direct dial: 202-736-6138  
email: Chris.Boam@mci.com

November 12, 2004

BY EMAIL: FR0439@ustr.eop.gov

Ms. Anita Thomas  
Attn: Transatlantic Economic Relationship – Written Comments  
Office of the U.S. Trade Representative  
Office of Europe and the Mediterranean  
1724 F Street, N.W.  
Washington, D.C. 20508

RE: Enhancing the Transatlantic Economic Relationship

Dear Ms. Thomas:

This is in response to the United States Trade Representative's Federal Register notice of August 17, 2004, which solicits comments on new ways to further strengthen the transatlantic economic relationship. We are pleased to offer comments on an issue that will likely impact this important subject, particularly in the year ahead. That issue is data retention, the collection of all data traversing a communications network, regardless of sender/recipient or investigative purpose, for eventual review by authorities as need arises.

The European Union is presently engaged in a Consultation on a framework for mandatory data retention, which is expected to result in final draft legislation by mid-Spring 2005. This Consultation is being conducted jointly by the European Commission Directorates for Justice and for Information Society. We are very concerned that current EU proposals are neither based upon demonstrable law enforcement needs nor reflect the technical and economic limits of multinational industry to implement such retention schemes. These concerns have also been widely evidenced in written comments to the Directorates and at a public forum on retention held in Brussels on September 21, 2004.

We have worked closely with the Information Technology Association of America (ITAA), other US and global associations and NGOs and with other industries to emphasize these concerns. In particular, we – in conjunction with critical input from our colleague companies in Europe – were contributors to comments made by the ITAA in September. These comments are attached to this letter, and we highly recommend them to you for review. The comments extensively outline the difficulties caused by disparate retention laws existing in the EU and the anticipated technical and economic

impacts to communications industries and their customers from various proposals. However, in this letter, we would like to emphasize the following key points:

1. Data "preservation" – the retention of data for a specific case and for a finite period, as practiced in the US – should remain the preferred method for investigative cooperation, and EU Member States should continue to be permitted to favor preservation over retention as several already have.
2. Current and proposed Member State laws differ greatly both in the durations and definitions of data to be retained. Most proposals, including a recently amended draft Framework Decision from May 2004, would only exacerbate the problem. If retention must occur, and be viable in the single market, harmonization on both points is necessary, according to the following:
  - Any duration established by a framework should act as a ceiling, supported by the "demonstrable need" of law enforcement, and not as a suggested scope.
  - A harmonized traffic (or billing) data definition must be sufficiently flexible to assimilate next generation communications services.
3. A pan-European cost reimbursement scheme is a critical component to any retention framework, to cover retention and search costs beyond industry business cases and to safeguard the privacy rights of individuals.
4. Access to data retained pursuant to any mandatory retention requirement must continue to be limited to law enforcement and for criminal investigative purposes only, under a clear process for law enforcement to achieve the requisite authority.
5. Waivers should be put in place for communications service providers acting in conformance with a valid law enforcement request to access retained data.

We recognize the strength of our current transatlantic relationship, and we realize that continued development of this relationship and greater integration will rely on careful consideration of laws that have extra-territorial impacts. Although not a traditional market access barrier, the data retention issue has the potential to greatly impact the changing technological underpinnings of the global marketplace. The following comparison to some current proposals is illustrative. Imagine, for example, that a postal service would have to make a copy of every single parcel, letter or postcard, in addition to all information on the movements of the individual postal courier, and store it for 12-36 months or greater. As ITAA President Harris Miller stated in the attached comments: "Inconsistent and disproportionately heavy retention requirements will drain limited resources without strengthening either the cooperative bond between law enforcement authorities and communication service providers or the investigative utility of the information retrieved from such measures."

We appreciate the opportunity to comment on furthering transatlantic economic integration, and we would welcome the opportunity to discuss with you at greater length our recommendations and concerns on data retention.

Ms. Anita Thomas, November 12, 2004 (page 3 of 3)

If you have any questions or need additional information, please do not hesitate to contact me directly at (202) 736-6138.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher Boam". The signature is fluid and cursive, with a large initial "C" and a long, sweeping underline.

Christopher Boam  
Senior Counsel, International Affairs

Attachments: (1) – ITAA Comments of Sept. 13, 2004