BUILDING GLOBAL COMMUNICATIONS

December 13, 2002

Ms. Carmen Suro-Bredie
Chairman, Trade Policy Staff Committee
Office of Trade and Economic Analysis
Room H-2815
U.S. Department of Commerce
Washington, DC 20230

Dear Ms. Suro-Bredie:

Thank you for providing the Telecommunications Industry Association (TIA) with an opportunity to participate in the development of the National Trade Estimate (NTE) report by highlighting the trade concerns which affect our industry. Obtaining greater access in foreign telecommunications equipment markets is a key priority of TIA and we and our more than 1,000 member companies throughout the United States welcome this opportunity to identify barriers that skew the market unfairly and hinder the free flow of products in the global market.

We recognize that your request for comments included instructions to provide estimated increases in exports and the methodology used to make these estimates. We certainly believe that this is valuable information, however, much of this information is proprietary and is not easily available from individual companies. Nevertheless, we hope that the information we have provided below will be useful as you address trade issues of importance to TIA member companies.

Brazil

Standards, Testing, Labeling and Certification – On July 12, 2002, Brazil's telecom regulator (ANATEL) issued a notice to all "appointed certification bodies" (abbreviated OCD in Portuguese) stating that it would no longer accept foreign test results for type-acceptance and certification of wireline and wireless telecommunications equipment. All applications are now required to have supporting compliance data taken by third party test laboratories located in Brazil, and these tests must be witnessed by OCD representatives. The only exceptions are for cases where no test laboratory exists in Brazil with the capability to test a specific telecom device or product.

At an open meeting on 30 July, ANATEL maintained that its July directive was only a clarification of the situation previously defined in Brazil's Resolution 242 (issued in 2000). Until July, foreign test data had been accepted for some products because OCDs

believed that a valid agreement existed between Brazil and ILAC (International Laboratories Accreditation Cooperation) for the mutual recognition of test results. However, ANATEL clarified in late July that while such an agreement exists, it does *not* include recognition of test reports. According to ANATEL, acceptance of foreign test data prior to July was based on a widespread misunderstanding of the situation by OCDs. These new requirements apply to both wireline and radio communications products.

ANATEL's decision regarding the acceptance of foreign test data is also contrary to the public statements made by the Brazilian government over the last two years in the context of the Inter-American Telecommunication Commission (CITEL) Mutual Recognition Agreement (MRA) indicating that Brazil would in fact accept foreign test data for telecommunications and information technology products. This decision impedes market access for foreign suppliers and is contrary to the spirit of the CITEL MRA.

Colombia

In February 1997, Colombia signed the Basic Telecommunications Services Agreement. The results of this WTO negotiation on market access for basic telecommunications services became effective on February 5, 1998. However, Colombia has not met its obligations as a signatory to the Basic Telecommunications Agreement, particularly the requirements regarding the establishment of a transparent and non-discriminatory regulatory process and an independent regulator.

The Andean Trade Preferences Act (ATPA) expired in December of 2001, but was renewed as the Andean Trade Promotion and Drug Eradication Act (ATPDEA) as part of the Trade Act of 2002. On September 25, 2002, President George W. Bush announced that Colombia, along with Bolivia and Peru, would receive new Andean trade benefits under the ATPDEA. (The Administration subsequently announced that Ecuador had met the certification criteria to receive benefits under the ATPDEA.) These benefits comprise a trade preference program that provides four Andean countries with duty-free access to U.S. markets for approximately 5,600 products. All existing provisions of the ATPA were renewed, each country enjoys the same benefits as under the original program, and the program was extended by 700 additional products. However, the law requires a country certification process for the new, expanded portion of the program, which includes receiving public input on each country's eligibility.

TIA believes that it is essential for ATPDEA beneficiary countries to follow established WTO rules and adopt, implement and apply transparent, nondiscriminatory regulatory procedures and to enforce their arbitration and court awards. These actions are a condition of Colombia's benefits under ATPDEA. Nonetheless, in 2001 and 2002, Colombia's state-owned telecommunications operator, Telecom, repeatedly failed to honor a specifically binding arbitration decision involving the telecom network installed by a U.S. supplier as required under the previous ATPA guidelines; these guidelines have since been incorporated into and expanded the ATPDEA.

Although the Colombian government eventually made an award to the U.S. supplier in the arbitration case, this action was only taken after prolonged pressure from the U.S. Government and the threat that Colombia would not receive the new, expanded benefits under ATPDEA. There are still several contracts pending with suppliers and further arbitration is possible. It is clear from their actions that the Colombian Government and Telecom have no intention of honoring these contracts. Telecom continues to delay dispute resolution mechanisms and arbitration, and avoids serious joint negotiations with seven global suppliers that desire a settlement for all outstanding contracts. Furthermore, proposals for legislative changes have surfaced that would exempt public entities from the arbitration process or at least from paying for it. It is TIA's understanding that the proposed legislation is backed by the Colombian government in an effort to avoid the dispute mechanisms contained in the each of the contracts.

The apparent failure of the Colombian Government to honor the terms of its agreements puts at risk future foreign investment in Colombia at a particularly important moment in its history, and further erodes confidence in the overall investment climate as well as the broader international business community. TIA urges USTR to continue to pressure the Colombian Government to fulfill contractual commitments with U.S. suppliers or risk losing its trade benefits under the ATPDEA.

People's Republic of China

(NOTE: Information compiled via USITO, TIA's affiliate office in Beijing. USITO represents AeA, CSPP, ITI, SIA, SIIA and TIA.)

With regard to specific market access issues in China, TIA and its affiliate office in Beijing, the U.S. Information Technology Office (USITO), offer the following comments.

Import Tariffs – China's commitment to join the WTO Information Technology Agreement (ITA) has resulted in the lowering of a vast majority of IT product tariffs to zero, most this past January and most of the remaining others by 2004/2005.

Thus far, China has implemented its tariff schedule commitments, with a few, notable exceptions. The most notable deals with the Chinese government's requirement that companies submit an end-user certificate on the import of fifteen IT product areas. On January 11, 2002, the MII and Ministry of Finance issued a jointly promulgated *"Some Information Technology Products' Certification Temporary Methods"* which requires end-user certificates on 15 different IT products in order for the product to receive the lower tariff level stipulated in the ITA. The certification, issued after examination by MII, was to guarantee that the imported products were being used for the production of other Chinese IT products. The 15 products all contained "exceptions" written into the Goods Annex of China's WTO accession package, which lists the separate tariff rates. This list was also published in the General Administration of Customs 2002 "Customs Import and Export Tariff of the PRC" under Annex 5: Duty Rate on Imported IT Goods (Incomplete), 2002 (p. 645).

This requirement for end-user certificates runs counter to both the spirit and letter of China's ITA commitments. We support the position of the U.S. government to postpone China's accession to the WTO Committee of Participants on the Expansion of Trade in Information Technology Products (ITA Committee) until this issue is resolved.

Local Content and National Treatment – China's long-standing preference for local content has been substantially reduced with WTO entry. Most legal supports for local content have been removed, and the few that remain are very carefully worded. While it may be difficult to ensure that all examples of local content were immediately abolished at the time of accession, the Government's use of local content requirements appears to be diminishing.

The government procurement law clearly states a preference for local goods and suppliers, but the precise definition of local content and the rule of origin is in the drafting process, which will be issued by the General Administration of Customs. For now, the rule of thumb for goods appears to be that anything manufactured inside the customs territory of the PRC (domestic or foreign firms) is considered local, a definition that excludes manufacturing facilities located in the special economic zones or bonded areas. Services and engineering projects remain undefined for government procurement.

National security is often invoked as a justification for local content, and this is closely related to telecommunications and software local content requirements. Information security, for instance, is an area where China often claims a right to require local content or local providers, at least for a portion of the project.

There had been localization requirements for parts and materials for products made in China which were not technically legal requirements, yet firms had been required to file localization plans with their foreign investment application. The Chinese government also audited foreign firms to determine local content. What constitutes local content can be subject to many definitions. For example, importation via a Chinese distributor can qualify a part as "local." Chinese sectoral industrial policies also contain local content requirements. In our discussions with Chinese officials, there is a recognition that these policies are inconsistent with China's WTO obligations and would be repealed in time.

Standards, Testing, Labeling and Certification **–** The Chinese government has made great progress in the standard arena the past few years and WTO accession is providing additional impetus. The State Administration Commission of Standardization (SACS) was established to manage all standardization processes, coordinate with the various ministries for (theoretically) a harmonized standard-setting process in China. Last December, China published its, "Regulations on Adopting International Standards." which embraced the principle that China will adopt existing international standards developed by an international standard development organization (SDO) accredited by the ISO. China sent its Notification of Acceptance to the WTO related to the Code of Good Practice for the Preparation, Adoption and Application of Standards (Notification under Paragraph C of the WTO TBT Code of Good Practice) in April 11, 2002. TIA &

USITO are encouraged by this recent progress especially movement towards adopting more international standards and for increased Chinese participation in international standards development organizations.

The Chinese regulatory authorities have been more willing to meet with foreign industry on draft standards and regulations and receive industry inputs. Safety and electromagnetic compatibility (EMC) regulatory and certification are now harmonized under the CNCA (Certification and Accreditation Administration) management.

However, redundant testing continues to be a problem. In addition, to China Compulsory Certificate (CCC) testing for all products, electronics products must also be tested for electro-magnetic emissions (EME). Some telecommunications equipment faces two additional tests, from two different sections of MII. The Telecommunications Administration Bureau (TAB) tests for network access and the Wireless Radio Regulatory Bureau (WRRB) tests for spectrum interference. Quite often, the CCC, EME, TAB, and WRRB tests have significant and duplicative overlap with each other. Some of this redundant testing is a result of China's governmental reorganization, as each agency maintains its own independent testing requirements and testing centers, even after being merged with other agencies. This is a particular problem for the IT industry where product lifecycles are exceptionally short. CNCA has been willing to meet with foreign industry and discuss our difficulties; however, reform in the conformity assessment area has been slow. TIA and USITO believe the Chinese government needs to give greater attention to addressing these problems.

On the standards development side, over the past three years the government has begun inviting "qualified" foreign companies to participate in standard bodies, as observers. Also, some foreign firms are limited to "Correspondence" status, receiving all written materials but not having the right to attend, speak, or vote at meetings. TIA and USITO support a standards development processes that is open, transparent, fair, nondiscriminatory, and driven by market needs and developments. We urge China to allow foreign and domestic industry to participate in the development of China's standards regimes and to permit foreigners to join Chinese standards bodies as full members. Chinese State Councilor Wu Yi (as well as CNCA and SACS) has repeatedly stated that China would adopt international standards as much as possible. However, concern remains over China's use and recognition of *de facto* and other international standards (such as those developed by industry or *ad hoc* groups).

Independent Regulator – Over recent years, even prior to the WTO agreement, the Ministry of Information Industry has moved increasingly towards becoming an independent regulator. However, linkages between the telecommunications enterprises and the regulator remain quite strong.

Lack of Competition between Cable and Telecom Systems – China continues to effectively restrict telecommunications operators and cable TV broadcasters from competing in each other's markets – no telephony on cable systems, which are regulated by the State Administration of Radio, Film and TV (SARFT) – and no video on telecom

systems, which are regulated by MII. USITO strongly urges the Chinese government to remove these artificial barriers since the beneficiaries would be the consumer, with more choices and lower prices, and the market, resulting from greater efficiencies.

Chinese-Only Ownership of International Gateways – New regulations on international gateways (*International Telecommunications Gateway Administrative Methods* were passed by the Ministry of Information Industry on March 14, 2002, promulgated on June 26, 2002, and become effective on October 1, 2002) restrict the ownership, construction, and administration of international gateways to fully Chinese-owned state owned enterprises. However, international telecommunications services are to be opened to foreign investment, implying that all facilities necessary for providing international services should also be opened to foreign investment.

Geographic Restrictions – China's WTO accession commitments on Telecommunications Services, and in particular, Value Added Services, imposed the following limitations with respect to geographical coverage for suppliers providing service though commercial presence, "foreign service suppliers will be permitted to establish joint venture value added telecommunications enterprises, without quantitative restrictions, and provide services in the cities of Guangzhou, Shanghai and Beijing…within one year after China's accession, the areas will be expanded to include Chengdu, Chongqing, Dalian, Fuzhou, Hangzhou, Nanjing, Ningbo, Qingdao, Shenyang, Xiamen, Xi'an, Taiyuan and Wuhan".

Value-added services are defined as electronic mail, voice mail, on-line information and database retrieval, electronic data interchange, enhanced/value-added facsimile services, code and protocol conversion and on-line information and/or data processing.

Interactive services, Internet services and Internet content services clearly fall within this category. The business model of value-added interactive, Internet and Internet content services is that they lease capacity from basic service providers to reach customers wherever the value-added service can be accessed. A facilities-based commercial presence is not required to provide service to customers who access value-added Internet services through their basic telecommunications provider.

Notwithstanding the business model of the Internet, MII has taken the position that the WTO accession agreement limits the customers that can be served by a value-added telecommunications provider to, initially, three cities and subsequently 17 cities. At times they have also suggested that a commercial presence must be established in each city where customers will be located, and that an inter-regional service, based in one city but serving customers in another, is not permitted.

Such an interpretation is inconsistent with the global model of how value-added, non-facilities based Internet service providers are structured, and imposes geographical restrictions that make an interregional, or national scaled business model non-viable. The impact of this interpretation is to negate the benefits accorded to foreign value-added telecommunications providers under the WTO agreement.

Republic of Korea

Government Procurement – Korea joined the WTO Agreement on Government Procurement (GPA) on January 1, 1997. The scope of the Korean commitment included the procurement of goods and services over specific thresholds by numerous Korean central government agencies, provincial and municipal governments, and some two-dozen government-invested companies. However, Korea's GPA commitment currently does not include Korea Telecom's purchases of telecommunications commodity products and network equipment and in 2002 the Korean Government strongly influenced Korea Telecom's procurement decisions. This influence on Korea Telecom and its subsidiary, KT-ICOM, has resulted in a procurement process that is not transparent or fair, and discriminates against non-Korean suppliers. For example, for a recent project KT-ICOM added a second benchmark test for bidders with criteria that favored Korean suppliers. USTR should urge the Korean Government not to influence the procurement decisions of privately held companies, such as Korea Telecom and KT-ICOM. In addition, any procurement decisions by the Korean government should be made in the spirit of the GPA.

Technology Neutrality in Wireless Communications – The Telecommunications Industry Association (TIA) supports an open market policy with respect to the standards and technology decisions made for the deployment of commercial wireless systems. We believe that governments or other non-commercial factors should not influence an operator's choice regarding which technology would best suit the needs of its customers. Although allowing for multiple 3G technologies to be deployed in the market, TIA members have raised concerns about the process for awarding 3rd Generation (3G) wireless licenses in Korea.

Latin America and the Caribbean

Import Tariffs – TIA remains concerned that all but three players in Latin America (Costa Rica, El Salvador, Panama) have not joined the United States, the European Union, Japan, India, and others in signing the ITA. Many key trading partners in the region continue to maintain high tariff rates while benefiting from the elimination of tariffs in other markets, taking advantage of the fact that the ITA is a voluntary agreement. If Brazil and its neighbors cannot be persuaded to join the ITA voluntarily, then the United States government should push for making the ITA binding in the FTAA or WTO Doha negotiations. TIA is encouraged that Mexico has chosen to unilaterally reduce tariffs on high-tech goods, but urges Mexico to formally adopt the ITA.

Mexico

Standards, Testing, Labeling and Certification – Mexico was required under its NAFTA obligations starting January 1, 1998 to recognize conformity assessment bodies in the U.S and Canada under terms no less favorable than those applied to Mexican conformity assessment bodies. Mexico has indicated that it is willing to conform to these obligations

only when the Government of Mexico determines that there is additional capacity needed in conformity assessment services. So far no U.S. or Canadian conformity assessment bodies have been recognized by Mexico for most products that are exported from the U.S. and Canada to Mexico, which need conformity assessment. This procedure does not meet the intent of Mexico's NAFTA obligations, continues to protect their conformity assessment bodies and Mexican manufacturers from fair competition from U.S. and Canadian exports into Mexico.

Both the U.S. and Canada have been openly recognizing each other's conformity assessment bodies under the same NAFTA provisions for many years. This has promoted U.S. – Canadian trade by reducing the burden on exports from each other's markets while meeting the confidence needs of the regulators and the market by allowing manufacturers to attain needed conformity assessments locally that provide market access for both the U.S. and Canada.

Russia

Over-Regulation through Subordinate Regulatory Acts – Provisions of the existing Law on Communications are general in nature, providing executive government agencies [including the Russian Federal (RF) Government, the RF Ministry for Communications and Informatization (the Communications Ministry) and the RF Ministry for Anti-Monopoly Policy (MAP)] the right to issue regulatory acts on a very broad range of matters, including issuance, suspension and withdrawal of licenses; licensed activities in the telecommunications sector; license fees; approval of rules for connection to PSTN; obtaining telephone lines; tariff regulation; etc. The result is that the large number of regulatory acts issued and enacted by a multitude of government agencies creates confusion among businesses, market instability and difficulty adhering to applicable laws and regulations.

To achieve legislative stability and transparency in regulating the telecommunications sector, it is necessary to broaden the scope of the Law on Communications to include many of the above-listed activities, while at the same time limiting the power of multiple executive authorities to introduce binding rules.

Excessive Number of Regulatory Authorities – Regulatory acts governing the activity of telecommunications operators and manufacturers are adopted by the RF Government, the Communications Ministry, MAP, the RF State Service for Telecommunications Supervision, the General Radio Frequency Center and several other authorities. The excessive number of agencies with authority to regulate leads to jurisdictional confusion among businesses and a lack of regulatory transparency and predictability in Russia's telecommunications sector. The end result is that the excessive number of regulatory authorities makes it difficult for companies to conduct business in the telecom sector. It would be very useful to U.S. industry if the number of regulatory authorities in the telecommunications sector was reduced to one or two, and if an independent regulatory authority were created.

Licensing Issues – Under current rules, licenses for the provision of telecommunications services in Russia may be granted for terms ranging from five to ten years. The Communications Ministry is Russia's sole licensing authority, and it has broad discretion over the methods of awarding licenses, as well as the content and terms of licenses. These licensing rules create a number of problems for U.S. firms seeking to operate in Russia. The Ministry can change the terms of a license at any time within the period of the license validity. In addition, licenses are individual, rather than uniform in nature, thus giving advantages to some of companies over others. Upon license expiration, the Law does not specify that the license shall be extended on the same terms as the license that has expired. Furthermore, the maximum license term of ten years is too short in many instances, since a full recovery of investment takes longer than ten years for some projects.

Standards, Testing, Labeling and Certification – The existing Law on Communications requires mandatory certification of telecommunications equipment before the provision of services has begun. At the same time, the certification procedure is very complicated and may take up to one year, which is very problematic, given the speed at which new technologies develop.

The Russian Ministry of Communications and Informatization continues to employ a long and costly process for certifying telecommunications equipment for domestic use. U.S. companies are frustrated by delays, which cost millions of dollars in time spent obtaining certificates, hiring additional human resources to complete the certification process, and paying fees to commercial entities licensed by the Ministry to conduct certification. In general, the certification process is lengthy, inefficient, expensive and non-transparent, and there does not appear to be a genuine effort to harmonize Russian telecom standards and procedures with those required by the WTO.

In order to improve the system, Russia's Communications Ministry should harmonize its equipment certification procedures with international and WTO telecommunications principles. U.S. manufactures do not consider cosmetic changes to Russian certification regulations as sufficient harmonization with worldwide practices and norms. Russian legislators should be encouraged to make provisions in federal legislation allowing for the recognition of certificates issued by major international testing agencies. This will help to ensure that new technologies penetrate the Russian market and are available to a larger consumer base faster and more affordably.

Lack of Effective Dispute Settlement Procedures – Russia's existing legislation provides for dispute settlement in court between operators, but working through the Russian courts often takes an inordinate amount of time and is ineffective. This is because judges often lack specific or expert knowledge and experience in telecommunications law, which complicates the legal proceedings. Moreover, Russia's dispute settlement procedures are poorly developed and are in need of improvement.

Taxation Uncertainties – Although Russian tax legislation has progressed considerably over the last few years and has became more favorable to companies engaged in

production and export activities, its interpretation and implementation by authorities significantly contradicts some of the principal points of the law. For example, according to the 2001 Tax Code, input VAT paid by the exporter should be refunded within three months after the claim is submitted. In practice, however, customs and tax authorities have introduced additional requirements (preliminary export license requirements from a tax office, additional export permits, additional information about the exported product) not mentioned in the Code, thus making compliance a real burden for exporters. In addition, input VAT is not refunded in a majority of cases for many reasons, including unjustified refusals. To get input VAT back, exporters have to apply to the court system.

Foreign Ownership Limitations – There have been attempts by the Russian Government to introduce limitations on foreign ownership in the charter capital of Russian telecom operators' companies. According to the Russian Ministry of Communications and Informatization's "Concept of the Development of Russian Telecommunications," which outlines a ten-year blueprint for the development of Russia's telecommunications industry, the Ministry can "impose restrictions on direct access by foreign entities to the Russian telecommunications services market and restrict (foreign entities') direct and indirect majority ownership in Russian telecommunications companies." While Ministry officials appear to have softened their public remarks on the restrictions since the document was released in December 2000, U.S. telecom companies are not confident that restrictions on foreign ownership will negatively impact their activities in Russia.

In some cases, there appears to be increasing pressure from both government-controlled and private Russian telecommunications firms on some U.S. companies to relinquish their management control and/or pull out of telecommunications ventures altogether. In addition, in some cases, the Communications Ministry and Russia's judicial system do not treat U.S. investors equally with domestic competitors in the case of disputes.

Technology Neutrality in Wireless Communications – Despite the Ministry of Communications' approval of the use of multiple technologies for wireless communications, the Ministry has not implemented the decision. Rather, it has engaged in discriminatory treatment against certain wireless standards. The practice has been implemented in disregard of the RF Law on Communications.

TIA believes that the decision of which technology, or technologies, to deploy should be led by the private sector and should be commercially oriented. Governments should play only a minimal role in the process and only in areas that are aimed at protecting the public interest, protecting spectrum from harmful interference and laying the ground rules for a competitive market.

Reliance on market forces, rather than government mandate, results in the development of the most innovative technologies and in the universal deployment of wireless services. TIA believes that a robust and market-driven environment leads to more rapid build out of infrastructure, faster delivery of services to customers, and lower costs for both equipment and services for consumers.

Taiwan

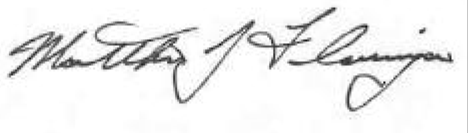
Government Procurement –U.S. companies have encountered significant trade barriers with respect to procurement decisions taken by the state-owned telecommunications operator, Chunghwa Telecommunications (CHT). The Minister of Transportation and Communications oversees the purchases and operations of CHT. U.S. companies have been hindered in bidding on major telecommunications projects by the use of non-transparent procurement procedures. At least one award for a recent third generation wireless telecommunications project was made in an arbitrary and non-transparent fashion – CHT did not select the company whose bid was approximately 35% less than the eventual winner of the bid, although both bidders were qualified and short-listed by CHT based on earlier selection criteria.

In its accession to the WTO, Taiwan agreed to join the Agreement on Government Procurement (GPA). Adherence to the GPA's procedures should improve the transparency of the bidding process for major government procurement contracts, but actions by the government in the past year with respect to telecommunications procurements show that Taiwan is not acting in the spirit of the GPA. In addition, this lack of transparency and fairness in the procurement process may contravene Taiwan's own government procurement law which became effective in mid-1999. The new law is being implemented and enforced by a centralized body, the Public Construction Commission. TIA urges USTR to continue to engage Taiwan in negotiations to resolve inequities and transparency concerns in Taiwan's government procurement regime.

Conclusion

Thank you again for the opportunity to comment on trade barriers that our members face throughout the world. If you have any questions about this document or if we can assist you in other ways, please do not hesitate to contact Jason Leuck, TIA's Director of International Affairs, at 202-383-1493 or **jleuck@tia.eia.org**.

Sincerely,



Matthew J. Flannigan
President