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June 27, 2007

Secretary Marilyn Abbott
United States International Trade Commission
500 E St., SW
Washington, DC 20436

RE: The U.S.-Korea Free Trade Agreement

Dear Secretary Abbott,

On behalf of the Telecommunications Industry Association (TIA), I would like to express our support for the U.S.-Korea Free Trade Agreement (FTA). TIA is a leading trade association for the information and communications technology (ICT) industry, with approximately 600 member companies that manufacture or supply the products and services used in global communications. TIA represents its members on the full range of public policy issues affecting the industry, forges consensus on industry standards, and helps its members develop new business in foreign markets. Together, our industry generates revenues totaling over $923 billion in the United States and more than $3 trillion worldwide.

We believe that a successfully implemented FTA with Korea holds the promise of new opportunities for economic growth in both the U.S. and South Korea. The agreement would benefit both countries' ICT manufacturers, suppliers and service providers by establishing greater market access, assuring a rules-based and predictable business climate, and encouraging further bilateral investment.

The Republic of Korea is already an important market for the United States. In 2005, U.S. ICT trade with Korea surpassed $6.8 billion. U.S. ICT exports to Korea totaled $440 million, making Korea the 9th largest destination for U.S. ICT providers. Likewise, the U.S. is an important market for Korean ICT manufacturers, as U.S. imports from Korea approached $6.4 billion in 2005.

While the large U.S. deficit ($6.0 billion) in ICT trade with South Korea highlights the relative openness of the U.S. market compared with South Korea, it also suggests opportunities for U.S. ICT providers. TIA members could benefit from the significant growth in Korea's ICT sector, which is developing rapidly as a result of new infrastructure investments, the adoption of new technologies, and consumer demand for new applications. Korean Government reforms beginning in the late 1990s have facilitated foreign investment and attracted financial and intellectual capital, contributing to the sector's rapid growth. A new government policy implemented in 2004 will continue to grow the sector. That policy, the 21st Century Initiative project, seeks to stimulate investment in as many as 20 ICT-related sectors through cooperation among the government, private sector and research institutes. The Korean government believes that the Strategy will contribute to economic growth and social development by fueling investment, creating jobs and removing cultural barriers.

However, for the Korean government's goal to be realized and for additional opportunities for U.S. ICT equipment and service providers to materialize, the U.S. and Korea need to implement the recently completed bilateral free trade agreement. A successfully implemented agreement would benefit U.S.

ICT firms by eliminating any remaining tariffs on ICT products and by reducing or eliminating any regulatory obstacles and non tariff barriers that currently exist in the market. Additionally, a successfully implemented agreement would enhance regulatory transparency; facilitate network interconnection; increase or eliminate the foreign ownership on telecommunications service providers, which is currently limited to 49 percent; and reduce domestic preference programs through adherence to the principle of technology neutrality. Below we discuss specific commitments in the agreement that we believe will improve market access and facilitate trade and investment with Korea for the benefit of our members companies.

Technology neutrality

Technology neutrality, or "technology choice," is a critical issue for regulated sectors like telecommunications. Markets and innovation benefit most when ICT manufacturers and suppliers engage in demand-driven competition, standards are competitively and openly developed, and governments do not interfere either to curb market failures or enhance market champions.

Currently in Korea, TIA believes that government standards policy decisions are designed to inhibit non-Korean competitors in the Korean market and advantage domestic companies. USTR's 2007 National Trade Estimate Report on Foreign Trade Barriers notes that the Korean government mandates technology standards and particular technologies, thereby limiting foreign competition and market opportunities for TIA members. We note that the United States and Korea have shown the ability to resolve technological issues, such as in the case of Wireless Internet Platform for Interoperability (WIPI), which would have been the exclusive technology in Korea for downloading content from the Internet onto cell phones, thereby shutting out competing systems. In the end, U.S. and Korean negotiators worked to resolve the dispute, with Korea agreeing to guarantee access for competing systems. At the same time, the compromise reached on Korea's licensing for Portable Wireless Internet Services in the 2.3 GHz band did not fully meet the objective of providing "technology choice." In that dispute, Korea eventually agreed to allow license holders to use standards compatible with those approved by the Institute of Electrical and Electronics Engineers (IEEE). However, that decision still excludes companies that have developed other systems.

Given Korea's history of market distorting practices, TIA is pleased that the U.S.-Korea FTA contains strong language on technology neutrality. In the agreement's telecommunications chapter, Article 14.21, Measures Concerning Technologies and Standards, recognizes that competition and openly developed and transparent processes are important to ICT-sector growth, and it goes beyond what has been achieved in other trade agreements by limiting conditions under which parties can specify technology, thereby helping to avoid the arbitrary denial of technology choice. Specifically, the agreement permits parties to limit technologies used by service suppliers only when seeking to achieve a legitimate public policy objective. With respect to wireless services, "technical requirements" may be applied only to ensure (1) the efficient use of spectrum, (2) consumers' continued access to services, (3) to facilitate law enforcement, and (4) to protect human health and safety. The application of any technical requirement must be done on the basis of a rulemaking and can be challenged by the other party.

Foreign ownership
Korea has already taken steps to ease foreign investment restrictions in telecommunications services by allowing foreign ownership of up to 100 percent for simple international resale services interconnected to the Public Switch Telephone Network. However, Korea presently maintains a 49% restriction on foreign investment in Type 1, facilities-based telecommunications firms, which severely limits the market entry opportunities for TIA member companies.

TIA is pleased that the FTA eases the foreign equity restriction in Korea. Specifically, two years after entry into force, the FTA would permit foreign investors to indirectly own up to 100 percent of a Korean telecommunications carrier. As a result of this arrangement, TIA members that wish to invest in Korea can more fully benefit from provisions in the agreement's telecommunications chapter, many of which apply only to facilities-based firms. While relaxation of Korea's foreign ownership requirement does not apply to incumbent providers Korea Telecom and SK, TIA is pleased with the progress that the FTA makes in opening Korea's restrictive market to foreign investment. We believe that this important step toward a fully open market in Korea will encourage further service provider investment into the Korean market, thereby improving opportunities for TIA's telecommunication service and equipment provider members.

Other ICT-related provisions
TIA member companies will benefit from other ICT-related commitments, including, among other things, commitments on access to and use of the public switched network, interconnection, number portability, resale of services, networking unbundling, submarine cable landing stations, and regulatory independence. Many of these commitments go beyond what had been achieved in the WTO. For example, Korea's commitments in the WTO's Agreement on Basic Telecommunications do not include commitments on number portability and dialing parity, which work to facilitate market competition and benefit consumers. The agreement also reinforces Korea's commitment to an independent regulator, ensuring that Korea's telecommunications regulatory body will be separate from, and not accountable to, any supplier of public telecommunications services or government agency. This is critical to ensuring fairness, impartiality and regulatory integrity for each country's communications industry.

TIA member companies are also affected by audiovisual content restrictions. Such restrictions may affect the types of devices that consumers purchase to view programming. One area that is particularly promising for ICT firms is internet protocol television (IPTV) and on demand programming for hand held devices. Korea currently maintains a very restrictive environment for audiovisual services. Because content often dictates the types of devices used by consumers, TIA has long supported the ability of consumers to access and utilize their choice of legal audiovisual content. TIA is pleased that Korea has made some commitments to improve treatment to U.S. audiovisual products and services, agreeing to allow U.S. investment in IPTV services. However, some reservations for IPTV and video on demand remain in place.

With respect to new and emerging services, TIA is pleased that the "Negative List" approach of the agreement's services chapter ensures that agreed-to trade disciplines are automatically extended to

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services that have yet to be created or brought to market. As a result, the principles of market access, transparency and non-discrimination for telecommunications and other services will be reinforced.

Finally, the agreement's Intellectual Property Rights chapter reinforces Korea's TRIPs commitments, and requires ratification of other international intellectual property rights agreements, including the WIPO Copyright Treaties. The agreement also contains strong enforcement language. Overall, TIA is pleased with the agreement's IPR commitments.

As stated above, TIA strongly supports the U.S.-Korea FTA negotiations. The implementation of the agreement will provide important benefits to TIA's members by facilitating investment in Korea's telecommunications sector and guaranteeing market access for ICT goods and services. On behalf of TIA and our member companies, I look forward to the successful passage and implementation of the agreement. If you have any questions about this letter, or if there are other ways we can assist you, please feel free to contact Michael Nunes at mnunes@tiaonline.org, or 703.907.7725.

Sincerely,

Grant Seiffert
President