USCIB RESPONSE TO NOTICE OF INQUIRY ON GLOBAL FREE FLOW OF INFORMATION ON THE INTERNET

The United States Council for International Business (USCIB) members commend the Secretary's initiative for convening the Internet Policy Task Force, and in particular the working group on Internet Trade and Free Flow of Information. As we all know, the Internet facilitates global communications, e-commerce, and trade, and creates many social and economic benefits for consumers and businesses large and small. Obstacles to continued Internet innovation, which take many forms, are impeding global trade and investment in some countries.

USCIB promotes open markets, competitiveness and innovation, sustainable development and corporate responsibility, supported by international engagement and prudent regulation. Its members include top U.S.-based global companies and professional services firms from every sector of our economy, with operations in every region of the world. With a unique global network encompassing the International Chamber of Commerce, the International Organization of Employers and the Business and Industry Advisory Committee to the OECD, USCIB provides business views to policy makers and regulatory authorities worldwide, and works to facilitate international trade and investment. USCIB's ICT Policy Committee represents businesses from diverse industry sectors. The committee advocates for sound international policy frameworks, characterized by free and fair competition, minimal government intervention, free information flows and a user orientation, that ensure the continued growth of ICTs and extend their benefits around the world. The committee also increases awareness of the potential impact of policies, laws, and regulations related to ICTs and e-business.

USCIB fully supports the Universal Declaration of Human Rights and believes that ICTs and ICT applications have greatly advanced the ability of people around the world to exercise those rights, especially in areas such as freedom of expression and personal development. The free flow of information is critical to realizing these rights. USCIB also believes that ecommerce and unfettered access to global trade over the Internet empowers consumers and promotes economic development. Due to the importance of the Internet and the ecommerce market to our everyday lives, it is critical that the United States work to ensure that not only our domestic but international policies create an environment that encourages the continued growth of a global ecommerce market.

Business is proud of the role that it plays in innovating and investing in technologies, services and applications that bring the benefits of the Information Society to people worldwide. As such, we are pleased to provide comments on the impact of restrictions on the free flow of information on the Internet that exist and the role of international cooperation in addressing some of these concerns.

TYPES OF RESTRICTIONS ON THE FREE FLOW OF INFORMATION ON THE INTERNET

USCIB members broadly define information restrictions that impede or interrupt the free flow of information. Examples of restrictions imposed by governments include not only restrictions on the distribution of content based on widely-discussed criteria that include cultural, political, or religious concerns, but also restrictions on collecting, using or transferring personal information, encryption regulations, restrictions on location or sensor- based information, quotas on digital content among others. Limitations on the free flow of information related to the use of certain Internet applications also have a negative impact on trade and investment. For example, countries that limit or ban the use of Voice over IP (VoIP) preclude companies from gaining the economies and efficiencies of global platforms. Prohibiting use of such applications adds costs to doing business in those countries and may deter investment. Since the international voice communication market is elastic, increased cost means decreased voice traffic, i.e. some calls are not made that would

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have been made at lower costs. Furthermore, since VoIP is a key application that drives broadband deployment, prohibitions on VoIP can negatively impact a broad range of other information flows. There are also a number of barriers which have been created through either far-reaching or static regulatory regimes that have hindered the growth of global open ecommerce.

Additionally, when unforeseen or contradictory national rules are applied to new communications services or existing service innovations, they can easily deter cross-border service deployment and curtail future innovation and investment. When unforeseen or contradictory national rules are applied to new communications services or existing service innovations, they can easily deter cross-border service deployment and curtail future innovation and investment. Voice over Internet protocol (VoIP) permits the integration of voice, data, and other applications in a manner not possible only several years ago, creating opportunities for both businesses and consumers to communicate in new ways. Requirements to separately engineer service deployments in line with national rules, and/or comply with sui generis national licensing requirements, will greatly impede if not mitigate against deployment of VoIP and certain services like it to a market.

Several governments around the world are restricting, censoring, and disrupting the free flow of online information for various reasons. For these purposes, some governments are taking actions such as incorporating surveillance tools into their national Internet infrastructure; blocking legitimate online services in their entirety for political or censorship purposes; imposing new, secretive regulations; and requiring onerous licensing regimes. These actions unnecessarily restrict trade and investment. Indeed, companies must weigh the benefits of investing in a country against the costs these restrictions impose. In some cases, the restrictions prevent investment entirely and the company cannot provide its products and services in a market –which creates other problems, such as gray or black markets for those goods and services.

Some restrictions are focused exclusively on foreign business. Government restrictions on accessibility of information degrade Internet performance and block the “ports” of 21st century trade. When restrictions are applied only to traffic of foreign-origin, it means that foreign websites, and those businesses that rely on foreign websites to market and sell their products, become a second-best option to local competitors. This could be particularly harmful to economic growth since small and medium-sized businesses that are least likely to be able to afford having a local presence in countries around the world. Customer access to innovative products and services from such businesses also suffers from these restrictions

As pervasive, speedy, intelligent and affordable broadband provided through capable high-capacity networks is vital to the free flow of information, countries that have eliminated barriers to FDI have benefited from greater commitment and longer-term engagement by foreign investors as well as new management approaches, technology, and skills. FDI has typically been the driver of telecom sector growth in liberalizing economies, as well as other communications infrastructures. On the other hand, many still limit foreign ownership to less than 100% (and in some cases much less than 100%). And significantly, a guiding principle of economics continues to control in many circumstances where investment has in fact occurred – capital goes where it is welcome, and stays where it can grow. Many investors have either limited their investments in or kept away from countries that have placed restrictive caps on the level of FDI in the telecom sector, particularly where foreign investment is restricted to a minority.

The free flow of information is also impacted by requirements on service providers dictating that data be stored, processed, or both in-country, effectively requiring local investment and placing data under local jurisdictions. Requirements like this reduce the economic efficiency of the Internet, which otherwise allow a business in any one country to easily reach users and consumers around the world. Providers Internet services may chose not to serve some markets where such requirements make it economically impossible to do so.

Non-transparent restrictions on the flow of information that impede business operations make it difficult for businesses to make commercial plans and execute to those plans. To successfully export to or invest in a new market, a company needs to be able to understand the rules of the road and have some level of confidence that the government will not arbitrarily interfere with its business. The harm incurred when governments block the free flow of information goes beyond the Internet companies that are directly affected. For companies that are breaking into new markets, disruption of the services for even short periods of time can disrupt business plans, block their visibility to new customers at critical moments, and ultimately undermine their business plans and goals. Government restrictions on accessibility of information hurt the downstream businesses and consumers that cannot access legitimate services or goods.

INTERNATIONAL COOPERATION

Given the borderless nature of the Internet, international cooperation is vital to preserving an open network to facilitate the free flow of information.

Trade agreements can play an important role in this regard. Trade agreements can encourage market liberalization, investor protections, and the stable and predictable regulatory frameworks needed to demonstrate openness to foreign investors and a willingness to abide by globally recognized approaches. The U.S. presently permits up to 100% FDI in domestic telecom companies, despite that many countries (even some developed economies) limit the percentage ownership that a non-domestic company can have to less than a controlling interest. The U.S. flexibility for FDI and other areas can be exemplary and offer leadership in prompting relaxation of investment restrictions in other countries, particularly in the context of free trade agreement (FTA) negotiation. In any forthcoming bilateral or multilateral negotiations, whether or not leading to an FTA, we would recommend that the U.S. continue to pursue strategies that

- encourage other countries to either relax or remove restrictions on FDI in the telecommunications, communications and other, sectors, not only to encourage broadband infrastructure investment, but also to facilitate free flow of information that transverses these networks and
- promote economic growth through innovation, and pro-competitive policies with regard to commerce including e-commerce to promote trade and customer access to goods and services.

Liberalizing FDI in telecommunications, communications and other ICT related sectors is crucial to facilitating the free flow of information, and so is protecting the intellectual property that allows for the innovation of new ICT related products and services. The protection and enforcement of intellectual property rights does not restrict the free flow of information but rather promotes dissemination of digital goods and services and in fact promotes the long term viability of innovative products and distribution platforms.

International dialogue on these important policy issues can be useful in ensuring that differing policies across countries do not in themselves create barriers to the flow of information. There are several multi-jurisdictional forums that develop proposals or principles to guide governments as they develop policies concerning the free flow of information and access to knowledge on the Internet such as the OECD, APEC, WIPO and UNESCO. Organizations that base such principles on economic research are able to show the impact of restrictions on trade and investment and provide incentive for policies that support the free flow of information.

Multi-stakeholder initiatives allow for all key players – business, NGOs, and governments – to be part of a discussion to develop best practices or voluntary solutions. Intergovernmental bodies, while excellent in address human rights issues, and in offering their concerns, perspectives, and some sort of “enforcement” of the solutions/best practices, can get bogged down with political disputes and often do not have the necessary background and expertise on practical economic issues related to sustainable models to fully consider all solutions.

USCIB thanks the Department of Commerce for taking the initiative on the free flow of information to explore how the U.S. government, while broadly addressing this important subject, can also assist US companies overcome obstacles to Internet trade and gain greater access to markets. In addition to including such issues in trade agreements, USCIB believes that Senior Commercial Officers (SCOs) should be better briefed on policy issues that are obstacles. USCIB members would be pleased to assist in this effort. We also support the work of NTIA Associate Administrator Daniel Weitzner to promote the US privacy regime and to proactively explain the protections it guarantees and the work of NIST and NTIA to contribute to the development of Internet standards that assist trade and investment and thus reduce barriers. We recognize that the importance of these agencies having sufficient resources to perform their functions.