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Ms. Lisa R. Barton
Acting Secretary
United States International Trade Commission
500 E Street, SW
Washington, DC 20436

Re: Digital Trade in the U.S. and Global Economies, Investigation No. 332-531

Dear Ms. Barton:

AT&T Inc., on behalf of its affiliates, (“AT&T”) submits the following comments for consideration in the Commission’s investigation of digital trade in the U.S. and global economies. AT&T, through its affiliates, is a leading U.S. and global provider of the telecommunications network infrastructure and services that are the foundation of the digital economy. AT&T provides telecommunications services to virtually every country and territory in the world, and operates one of the world’s most advanced global backbone telecommunications networks. With operations throughout the United States and in countries that cover 97 percent of the world’s economy, AT&T is a worldwide provider of Internet Protocol (IP)-based communications services to businesses, a leading U.S. provider of wireless, high speed Internet access, local and long distance voice services, and a growing provider of IPTV entertainment offerings.

AT&T’s comments highlight the need to expand the benefits of competition in the global telecom sector which brings innovation, network reliability, improved customer service and lower prices as well as significant multiplier benefits to the global digital economy, allowing demand-driven development among IT-enabled service industries, and improving the productivity of consumers at all levels of income and education. Additional trade commitments are also required to remove foreign barriers to digital trade and electronic commerce. AT&T also emphasizes the importance of U.S. ratification of the Law of the Sea Convention to strengthen international legal protections for the undersea cable networks that are the critical global backbone transmission facilities for digital trade and electronic commerce.

Telecom Liberalization

Open, competitive telecommunications markets are major drivers of digital trade and electronic commerce. Prior to the WTO Basic Telecom Agreement in 1998, telecommunications was provided on a monopoly basis in most countries. Fifteen years after that historic agreement, many countries now have fully open telecommunications markets and are receiving significant economic benefits as a result. Indeed, the importance of encouraging telecommunications liberalization in all countries has increased in the intervening years, as telecommunications networks have rapidly become the backbone of electronic commerce and the knowledge-based

economy of the 21st century.¹ The development of competitive telecommunications markets stimulates the provision of high quality, low cost communications and the spread of information and communications technology, which not only benefit U.S. consumers and all U.S. industries competing in the global marketplace, but also encourage greater growth in the world economy.

There is abundant and compelling evidence of these benefits.² The World Bank reports that “[l]iberalization and competition – and the resulting increase in private investment – have driven the development of telecommunications infrastructure and ICT in general. . . . By opening their communications markets through well-designed reforms, governments can create competitive markets that grow faster, lower costs, facilitate innovation and respond better to user needs.”³ Liberalization and competition “will stimulate new investment in additional bandwidth, increase demand for communication services through falling prices, and promote greater efficiency and innovation in the provision of infrastructure and services.”⁴ To extend these

¹ The OECD has noted the close relationship between telecom liberalization and the success of the Internet IP market for traffic exchange. See OECD, *Internet Traffic Exchange, Market Developments and Policy Challenges*, Oct 17, 2012, at 10 (“[I]n regions where the development of Internet IP traffic exchange has been less satisfactory, the cause has generally been a lack of sufficient liberalization within the country or region, rather than a lack of performance by the global Internet market as a whole.”)

² See, e.g., United Nations Conference on Trade and Development, *Information Economy Report 2011*, at 102 (“The potential of ICTs cannot be fully realized without adequate infrastructure and skills and a commitment by government to free and open markets.”); World Bank, *Information and Communications for Development 2006: Global Trends and Policies*, at 3 (“Experience over the past decade has shown that a vibrant and competitive information and communication sector is a prerequisite for developing information societies.”); World Bank, *Africa’s ICT Infrastructure, Building on the Mobile Revolution* (2011), at 14 (“Mounting evidence suggests that as markets become more competitive, performance improves, which in turn stimulates greater levels of investment, more extensive networks, and lower prices.”); World Bank, *Building Broadband, Strategies and Policies for the Developing World* (2010) at 117 (“The first step of broadband policy implementation should be fostering competition with reduced entry regulations.”).

³ World Bank, *Information and Communications for Development 2006: Global Trends and Policies*, at 6.

⁴ *Id.* at 70. Another World Bank study states:

“Competitive, well regulated private investment remains the key to meeting the growing demand for [information and communications infrastructure]. There is plentiful evidence that countries that have introduced private competition under capable regulators have seen faster rollout of services and lower costs. Independent regulation and competition together raise private investment by 50 percent. In turn, private investment is related to higher teledensities and greater efficiency in the sector. Competition can also reduce prices by as much as 20 percent. Regarding the Internet and e-commerce, cross-country studies strongly suggest that rollout of affordable infrastructure is the most important factor, after income per capita, in explaining takeup.” *Financing Information and Communication Infrastructure in the Developing World*, World Bank Working Paper No. 65 (2005), at xiii.

benefits throughout the world, the U.S. should continue to encourage the removal of remaining barriers to trade and investment in this critical sector.

Many countries have opened their telecom markets as the result of the WTO Basic Telecom Agreement and are receiving significant economic benefits as a result, but there remain a large number of WTO member countries with only limited WTO commitments in basic telecom or no commitments in this sector, including many developing countries. For example, a number of important U.S. trading partners retain restrictions on foreign direct investment (FDI) in telecommunications that limit the foreign ownership of facilities-based operators to minority shares, including China, Mexico, Philippines, South Africa, Taiwan, Thailand and Vietnam.

Bilateral and multilateral trade negotiations provide important opportunities to remove barriers to telecommunications trade and investment in both developed and developing countries that impede liberalization in this critical sector and the broader economic growth that is stimulated by open market policies. Unfortunately, there has been little recent progress in the WTO Doha Round negotiations, but the current Trans Pacific Partnership negotiations with eleven Asia-Pacific countries, and the recent announcements that the U.S. will join negotiations with 18 countries for an International Services Agreement and also will negotiate a free trade agreement with the European Union, provide significant opportunities for additional market opening in this critical sector.

Countries should be encouraged to allow full market access for all basic telecom services, with no restrictions on foreign capital investment and control, and to adhere to the regulatory principles for basic telecom services listed in the WTO Reference Paper. The removal of restrictions on facilities-based competition provides significant benefits to consumers by requiring suppliers to compete vigorously and encouraging lower prices, the development of new services and the use of the most efficient technology to win customers and lower costs.

A key priority should be to encourage the removal of the FDI restrictions that continue to limit competition, investment and growth in many countries. Restrictions on foreign ownership are a major impediment to market access in telecommunications. No other technical barrier has the same impact as prohibiting the ability to own, control and set the strategy for a business. The costs of FDI restrictions far outweigh any purported benefits by raising the cost of capital for incumbents and new entrants alike and impeding competitive market entry and efficient management. As the World Bank has emphasized, FDI has “typically been the driver of [telecommunications] sector growth in liberalizing countries” and has brought “new management approaches, technology, and skills transfer to the host countries.”⁵ Moreover, “FDI restrictions not only place a maximum limit on potential foreign private investment, they can also deter such investments altogether.”⁶

⁵ World Bank, *Information and Communications for Development 2006: Global Trends and Policies*, at 16.

⁶ World Bank Working Paper No. 65, *Financing Information and Communication Infrastructure in the Developing World* (2005), at 16. See also, e.g., Procter & Oliver, *Capital Flows and Cost of Capital: The Importance of Liberalized Investment Rules for a Competitive Telecommunications Sector* (2002), at 22 (FDI restrictions “have a negative effect on both the ability to gain access to capital, and the cost of what is available, particularly for smaller and newer players in the telecom sector.”)

U.S. operators seeking to expand into foreign markets must overcome significant strategic and financial inefficiencies as a result of these restrictions. Partners that are new to the telecommunications sector may lack relevant operational expertise, while telecom providers in the foreign market may be more focused on protecting their existing business than on promoting the success of a new venture. Restricting foreign ownership to a minority stake increases these problems by denying the U.S. operator operational control of the joint enterprise and giving rise to concerns that the domestic controlling partner may not be committed to full implementation of the service portfolio, or may manage the network in ways that do not meet customers' service level expectations.⁷

The removal of foreign ownership restrictions is therefore a longstanding U.S. priority in telecommunications trade negotiations. In recognition of the adverse effects of these restrictions, the United States, the European Union and Japan have recently affirmed that the elimination of foreign ownership barriers is a key requirement for the global development of informational and communication technology (ICT) networks and services.⁸

All countries also should be encouraged to adhere to the full WTO Reference Paper, which reflects a global consensus on a set of regulatory principles relating to competitive safeguards, interconnection, universal service, independent regulation, licensing procedures and the allocation of scarce resources in order to encourage the development of competitive markets for basic telecommunications. The World Bank states that WTO Reference Paper "principles are considered to be best practices fundamental to ensuring minimum standards of good regulatory behavior, effective competition, and a stable climate for investors."⁹

Electronic Commerce

Additional trade commitments by all countries are also necessary to facilitate increased digital trade and electronic commerce. AT&T believes that the European Union-United States Trade Principles for Information and Communication Technology Services, released on April 2, 2011, should form the basis of such commitments. These principles require that governments should not limit foreign direct investment or prevent service suppliers from other countries electronically transferring information internally or across borders, or require ICT service

⁷ See *World Bank, Financing Information and Communication Infrastructure in the Developing World*, at 16 ("Complex ownership arrangements de-link management from facing investor risks and reduce foreign investor incentives for transfer of management expertise to the firm, thereby curbing effective, profit-oriented management. Further, lack of a clear policy for such investment prolongs negotiation, increases the risk for long-term partnership, and discourages future investments.").

⁸ The U.S. agreements with the European Union and Japan on best practice principles to encourage the global development of informational and communication technology (ICT) networks and services affirms that "full foreign participation" should be allowed in ICT services sectors. See European Union-United States Trade Principles for Information and Communication Technology Services, Apr. 4, 2011, Sect. 5; United States-Japan Trade Principles for Information and Communication Technology Services, Jan. 27, 2012, Sect. 7.

⁹ World Bank, *Information and Communications for Development 2006*, *supra*, at 34.

suppliers to use local infrastructure or establish a local presence in order to supply services.¹⁰ Governments also should not restrict the ability of suppliers to supply services over the Internet on a cross-border basis.¹¹ Additional principles require, among other things, transparent laws, regulations and procedures affecting ICT and trade in ICT services, independent regulatory authorities, and the authorization of competitive telecommunications services based wherever possible on simple notification by a service provider.¹²

The avoidance of restrictions on cross-border data flows is particularly important to digital trade. Countries should undertake to permit cross border data flows and external data management, storage, and access (including the ability to use cloud-based technologies) both within a firm and in its operations with customers. These commitments should clearly prohibit the adoption or continuation of requirements for local data storage, the use of local servers, or other local sourcing or local content restrictions that similarly restrict cross-border data flows and limit the growth of digital trade and electronic commerce.

Unnecessary Regulation

It is also important to ensure that other regulatory requirements do not act as discriminatory barriers to market access. To minimize regulatory impediments, countries should undertake in their trade commitments to require regulations to be limited to those necessary to achieve specific and legitimate public policy objectives, to establish regulations pursuant to transparent procedures allowing comment by all interested parties, and to review and eliminate regulations, or forbear from their application, where competitive market forces are present to achieve the regulatory objective.

All countries thus should avoid unnecessary regulation and allow commercially negotiated arrangements where competition is effective. Internet traffic arrangements, for example, are negotiated in highly competitive markets, in which prices for transit services are continually declining, Internet traffic volumes are continually increasing, and there are many options for Internet Service Providers (ISPs) and content providers to exchange traffic and reach users quickly and reliably.¹³ By encouraging the rapid growth of Internet connectivity throughout the world, these arrangements are a major reason for the phenomenal success of the modern Internet.

The effectiveness of Internet traffic arrangements results in substantial part from the absence of prescriptive regulation that would lock into place specific technologies and business models and increase cost. Governments and regulators have generally recognized that these arrangements are commercial transactions negotiated in a competitive marketplace and require neither regulation nor detailed oversight to ensure that consumers and other users are properly

¹⁰ European Union-United States Trade Principles for Information and Communication Technology Services, Sects. 3-5.

¹¹ *Id.*, Sect. 2.

¹² *Id.*, Sects. 1, 7 & 8.

¹³ The multiplicity of Internet interconnection relationships among thousands of market participants in this global “network of networks” allow any provider to reach all Internet destinations at low cost, and prevent Internet backbone operators from exercising market power.

served.¹⁴ Regulation of these arrangements is unnecessary, because the large number of indirect interconnection alternatives gives all networks strong incentives to reach efficient interconnection arrangements and thus ensures continued end-to-end connectivity. It is to be hoped that all countries will share this assessment and work to preserve today's unregulated Internet and the very significant user benefits that stem from its resulting dynamism, innovation, and flexibility.

Some countries and operators, however, wish to replace current commercially-negotiated Internet traffic arrangements with a "sending network pays" or similar regulatory model designed to subsidize the build-out of Internet network infrastructure. Although doubtless well-intentioned, such regulation would significantly harm rather than assist the future development of the Internet by suppressing Internet traffic flows and investment incentives, and reducing connectivity to countries adopting such regulation. Rather than adopt such misguided measures, countries that claim to require these subsidies to expand their Internet infrastructure should be encouraged to achieve this result by following the path successfully taken by many other countries of adopting the pro-competitive telecom liberalization and privatization policies recommended by the World Bank, UNCTAD and other expert observers.

The Law of the Sea Convention

AT&T and other U.S. telecom operators carry international traffic over vast undersea cable networks providing many alternative routes to virtually every country in the world. These international submarine cables carry virtually all U.S. Internet and voice and data telecommunications traffic outside North America, and are the critical global backbone transmission facilities for digital trade and electronic commerce.¹⁵

Submarine cables are vulnerable to damage by ship anchors, commercial fishing activities, natural events such as earthquakes, and other causes, resulting in approximately 200 outages each year on submarine cables throughout the world. In February 2008, breaks in four cables in the Mediterranean and Persian Gulf caused Internet outages across the Middle East, cut bandwidth capacity to India by half and seriously affected India's outsourcing business.¹⁶ In December 2006, an earthquake damaged nine submarine cables in the Strait of Luzon between

¹⁴ See, e.g., Body of European Regulators for Electronic Communications, *BEREC's Response to the European Commission's Questionnaire for the Public Consultation on the Revision of the Recommendation on Relevant Markets*, March 2013, at 2 & 28-29 (noting that "the list of markets in the Recommendation is a clear guidance to [national regulatory authorities] on the scope of ex ante regulation," that "[m]arkets related with IP interconnection have developed well without regulation," and that the inclusion of any IP interconnection market in the list of relevant markets in the revised Recommendation is "not justified").

¹⁵ See *FCC 2010 Section 43.82 Circuit Status Data*, Mar. 2012, Tables 3 & 5 (showing that satellite common carrier circuits comprise less than one tenth of one percent of active U.S. international circuits).

¹⁶ See, e.g., *Internet Disruptions Continue*, Chicago Tribune, February 2, 2008; *Fears Grow With Harm to Undersea Cables*, New York Times, February 5, 2008.

Taiwan and the Philippines, disrupting Internet traffic and financial markets in South East Asia.¹⁷ As these incidents demonstrate, in the age of globalization and the free flow of cross-border data traffic, the reliability of submarine cables is more important than ever before.

The ability to lay, maintain and repair submarine cables outside territorial seas, and particularly the ability to carry out these activities in a timely manner, depends on the effectiveness of international legal protections. Otherwise, for example, restrictions by coastal states may impede the timely repair and maintenance of undersea cables and also may delay the construction of new cables. The United States is one of a handful of countries that have signed, but not ratified, the Law of the Sea Convention, which entered into force in 1994 and currently has 153 nations as parties.

The Convention expands the right to lay and maintain submarine cables in the oceans of the world and provides stronger protections for cables against damage by other parties. In the negotiation of the Convention in the early 1980's, the U.S. was a major proponent of the expanded protections for submarine cables because of the concerns of the U.S. telecom industry.

The following provisions of the Convention have particular relevance to undersea cables:

- Articles 58, 79 and 112 guarantee the rights of nations and private parties to lay and maintain submarine cables on the continental shelf, in the exclusive economic zone (EEZ) and on the bed of the high seas. Under these provisions, submarine cables have protections equal to the freedom of navigation and superior to other laws which coastal states may seek to impose within their EEZ or upon their Continental Shelf. Importantly, coastal States may not require permits, payments or taxes for submarine cables exercising these rights.
- Articles 58, 100 & 101 require states to cooperate to the fullest extent possible in the repression of piracy (including acts of depredation for private ends against property such as submarine cables) in the EEZ and on the high seas.
- Article 113 requires states to adopt laws to make damage to a submarine cable, done willfully or through culpable negligence, and conduct likely to cause such harm, a punishable offense.
- Article 114 requires submarine cable owners that damage other cables in laying or repairing their cables to bear the cost of repairs.
- Article 115 provides that vessel owners, who can prove they sacrificed an anchor or fishing gear to avoid damaging a cable, can recover their loss against the cable owner, provided the vessel took reasonable precautionary measures beforehand.
- Article 297 provides parties to the Convention with compulsory dispute resolution procedures for the provisions concerning submarine cables, a key feature lacking in prior international treaties. Having rights to this dispute resolution process is a major potential benefit of U.S. accession to the Convention for U.S. cable owners.

Ratification of the Convention would enable the U.S. government to use remedies under the Convention to enforce these obligations. The U.S. would be able to raise claims under the Convention in response to actions like the March 2007 destruction of major segments of two

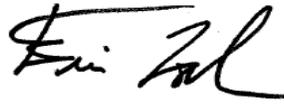
¹⁷ See *Asia Scrambles to Fix Quake Damage to Data Cables*, New York Times, December 29, 2006; *Crews Scramble to Reconnect Asia to Rest of World; Quake Snapped Underwater Cables For Phones, Internet*, USA Today, December 29, 2006.

submarine cables by fishermen off the coast of Vietnam, restrictions by coastal states impeding the timely maintenance and repair of undersea cables, and current efforts by one country to impose taxes on submarine cables transiting its claimed continental shelf. However, the U.S. has less ability to enforce its rights when it seeks to address an issue governed by the Convention, without being a party to this treaty.

Because of the importance of strengthening the protection and reliability of international submarine cables, AT&T supports U.S. Senate ratification of the Law of the Sea Convention at the earliest opportunity.

AT&T would be pleased to answer any questions concerning these issues.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Eric Loeb", written in a cursive style.

Eric. H. Loeb
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AT&T Inc.