



**VIA FACSIMILE**

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Timothy Stratford  
Assistant US Trade Representative for China  
Office of US Trade Representative  
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Dear Mr. Stratford,

CSI members strongly support the recent announcement by leaders of the U.S.-China Joint Commission on Commerce and Trade (JCCT) to establish a new sectoral forum to address trade barriers in China's telecommunications services.

The fourth year of China's accession to the World Trade Organization (WTO) is drawing near, but its telecommunications reforms have fallen short of accession commitments. China's overly narrow interpretation of market access opportunities for foreign participants and a lack of an independent regulator have hurt U.S. telecom companies. China's unreasonably high capitalization requirements for basic services and the prohibition on resale have also greatly limited market access in both basic telecommunications as well as value added services (VAS). Despite its WTO commitment to discuss further sectoral liberalization, China has yet to submit an improved telecom offer with meaningful market access provisions.

The JCCT telecom dialogue offers a useful vehicle to advance industry interests in liberalizing China's telecommunications market, and we suggest including the following issues and setting the following benchmarks for this forum.

### **Elimination of Capitalization Restrictions**

The high capitalization requirement along with other restrictions make it extremely difficult for businesses to enter and expand in the Chinese telecom market.

The only investment vehicle available to foreign investors is an equity joint venture (JV) with a Chinese partner under the provisions of the Foreign-Invested Telecommunications Enterprises (FITE) regulation.<sup>1</sup> The required registered capital depends on the type of the JV operation and the geographic coverage of its services:

### **Minimum FITE Capitalization Requirement**

<b>Geographic Scope</b>	<b>Basic</b>	<b>Value added services</b>
<b>Nationwide</b>	RMB 2 billion (US\$250m)	RMB 10 million (US\$1.3m)
<b>One Province</b>	RMB 200 million (US\$25m)	RMB 1 million (US\$125k)

These capitalization requirements are unrealistic and excessive. A foreign service provider, which otherwise meets the licensing qualifications, is unlikely to allocate such capital to a new and risky enterprise. It is equally unlikely for a Chinese joint venture partner to divert this capital from its core business.

China has already established a precedent for lowering its foreign JV capitalization thresholds in other sectors, including insurance and trading companies, and it should do the same in the telecom sector. It is also imperative that China implement its international obligations to increase the maximum foreign equity share in telecom enterprises, and allow wholly US-owned companies as part of this telecom dialogue.

### **Market Access for Resale Services**

Chinese regulations do not stipulate network unbundling and do not prohibit a wholesale provider from refusing to supply services for protectionist reasons. CSI members strongly support US efforts to ensure that China permits the resale of services and network elements. China's reluctance to allow the resale is out of step with increasingly sophisticated international value-added services markets, and is an entry barrier to potential foreign and domestic service providers.

In most liberalized markets, facilities-based competition and resale competition co-exist to the benefit of participating carriers. Resellers reduce price discrimination by bringing the discounts enjoyed by large customers to lower-volume users. Customers greatly benefit from the increased scope of services available from resale carriers at every level of the value chain (*i.e.*, from basic transport, to protocol enhanced data services, to custom-tailored application services, to fully managed enterprise-wide networks).

Resale allows a new entrant to gain familiarity with the marketplace and begin developing a customer base with minimal investment. The presence of both resellers and facilities-based providers also creates a greater incentive for third parties to go into the wholesale transport business to provide high-quality interconnection services or wholesale long-haul-transmission services at a competitive cost. In effect, resellers help

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<sup>1</sup> This requirement was stipulated in State Council Order No. 333, "Administrative Regulation on Foreign-Invested Telecommunications Enterprises," approved in principle at the 49<sup>th</sup> session of the State Council Standing committee on December 5, 2001, signed by Prime Minister Zhu Rongji on December 11, 2001, and effective from January 1, 2002.

to expand the market through a process that increases China's competition, and promotes new infrastructure development. Thus, resale competition should be viewed not as an alternative to network construction, but as a catalyst and complement to it.

To facilitate market development, China should lift the prohibition on resale, so that both incumbent carriers and new entrants are able to acquire capacity at wholesale rates and interconnect their networks to deliver services to a broader scope of customers.

### **Broaden Concept of Value Added Services**

Foreign market entry is being delayed by the Ministry of Information Industry's narrow definition of value-added services (VAS) for international value added network service licensing. The regulator has construed the meaning of VAS in China's WTO commitments so narrowly that any commercially important sectors, such as IP-virtual private networks (IP-VPN) services demanded by global enterprises, are excluded.

The Catalogue of Telecommunication Services defines basic and value-added services in a manner that severely discourages new providers from entering China's telecom market. As a result of the reclassification under the Catalogue, IP-VPN services are considered "basic," and their scope is limited to domestic services. A basic services license has been available to JVs in only three cities since December 2004, and is subject to a RMB 2 billion (US\$250 million) capitalization requirement.

The narrowing of value added services is a damaging counter-liberalization step contrary to China's WTO commitments. Therefore, China should expand the list of VAS in the Catalogue and include sectors, such as IP-VPN services, which is consistent with the international norm. Most markets, including many in the Asia Pacific region, have fully liberalized their VAS markets – along Type 1 (facilities-based) and Type 2 (service-based resale) classifications – and permit 100% foreign ownership of VAS enterprises. We urge China to follow this example.

### **Establishment of an Independent and Impartial Telecom Regulator**

China has not yet implemented its WTO Reference Paper commitment to establish an independent regulator. The Chinese Government still owns and controls all major telecom operators, and the Ministry of Information Industry still regulates the sector.

CSI encourages USTR and other U.S. Government agencies to place a high priority on establishing China's regulatory body that is separate from, and not accountable to, any telecom supplier, and that is able to issue impartial telecom decisions and rules.

Therefore, it is important that the regulatory body adopts the following:

- transparent procedures for drafting, finalizing, implementing and applying regulations and decisions;
- appropriate measures consistent with the WTO Reference Paper to prevent dominant suppliers from engaging in, or continuing, anti-competitive practices;
- a defined procedure – as it has done for interconnection – to resolve efficiently and fairly public telecom suppliers' commercial disputes;

- an independent and objective process for administrative reconsideration of its decisions; and
- appropriate procedures and authority to enforce China's WTO telecom commitments, such as the ability to impose fines, order injunctive relief, and modify, suspend, or revoke a license.

We believe that China must improve measures to effectively administer irregularities in the marketplace, and use legislative power to eliminate risks, specifically with regard to interconnection, the availability of network elements, and anti-competitive practices, such as price wars.

### **Issuance of China's Telecom Bill**

We hope that the JCCT telecom dialogue will expedite the issuance of China's long-awaited telecom legislation, which is being currently circulated among Chinese Government agencies. We would like to ensure that this bill facilitates further market access to China's telecom services and addresses outstanding sectoral issues. We also hope that this bill is available for public comment well before it comes into effect, and that all interested parties are able to comment.

We greatly appreciate the opportunity to convey our suggestions for the JCCT discussion on telecom. We hope that this forum will be as useful as the ongoing JCCT insurance dialogue, and we will be glad to discuss further our members' telecom issues in China.

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President

cc: David Weller  
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