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***Comments of the Computer & Communications Industry Association
on the Telecommunications Business Act Amendments and Enforcement Decrees***

Via electronic mail: new1234@korea.kr and xvshock@korea.kr

The Computer & Communications Industry Association (CCIA) respectfully submits this letter expressing concerns regarding the recent amendments to the Telecommunications Business Act and its potential impact for U.S.-Korea digital trade flows.

CCIA is an international, nonprofit industry association representing a broad cross section of large, medium, and small companies in the high technology products and services sectors, including Internet products and services, electronic commerce, computer hardware and software, and telecommunications.¹ CCIA's members share the commitment to the growth of the Korean economy to facilitate innovation in SMEs, and empower startups and entrepreneurs. We welcome the opportunity to cooperate in ways to enhance U.S.-Korea trade and investment.

The United States and the Republic of Korea share a strong trade relationship, as well as a mutual understanding of the importance of digital trade and Internet services. Since 2012, FDI among the two countries has significantly grown, with the stock of Korean FDI in the United States nearly tripling to \$58.3 billion in 2018 and U.S. FDI to Korea increased by 47% to \$41.5 billion. Additionally, U.S. Internet and digital services exports to Korea amount to \$10.5 billion in 2019, and imports in this sector to the U.S. from Korea were valued at \$2.35 billion in 2019.²

In uncertain times such as these, digital technologies have played a key role in maintaining business activities and communications around the world. Perhaps more than ever before, regulatory frameworks should continue to encourage cross border delivery of these services. CCIA encourages work to build an ecosystem where innovative content and applications can flourish, enabled by 5G deployment and other technologies.

CCIA would like to speak to the following matters. First, Internet services providers are concerned that the rules would introduce new uncertainties and regulatory burdens that would deter exports in a vibrant digital market. Second, it appears that aspects of these rules risk conflict with international commitments under the U.S.-Korea Free Trade Agreement (KORUS) and applicable WTO agreements.

First, the proposed rules as drafted would subject predominantly U.S. Internet services to disproportionate levels of risk and responsibility regarding network management outside their practical control. Cooperation between Internet content providers (referred to as “value-added telecommunications service providers” or VTSPs in the amendments) and domestic Internet services providers are critically important to ensuring effective delivery of online content to end-users in Korea. Strong cooperation can also help create new economic opportunities for SMEs and startups to reach new customers around the world. This is especially true for foreign VTSPs.

The proposed rules, however, inappropriately shift the burden for several responsibilities pertaining to network management to VTSPs, even though they lack the technical or information capabilities to control end-to-end delivery of the content. Internet service providers who control the network infrastructure and management remain the most adept to primarily control service reliability. These changes could also lead to unbalanced bargaining positions resulting in discriminatory or anti-competitive behavior by ISPs to the detriment of VTSPs, which could lead to demands for increased usage fees or other contractual conditions.

¹ A list of CCIA members is available at <https://www.cciagnet.org/members>.

² <https://apps.bea.gov/iTable/iTable.cfm?ReqID=62&step=1#reqid=62&step=9&isuri=1&6210=4>



Further, the new requirements as currently drafted lack sufficient clarity for VTSPs, which could increase the risk of legal disputes and pose problems for implementation and enforcement. For instance, Article 3 of the regulation does not provide enough clarity with respect to what “technical measures” are sufficient to meet the new “service reliability” obligations, and include several examples that are outside the VTSP’s full control, such as “consistent Internet connection” and preventing “excessive concentration of traffic and technical errors” within Korea. Additionally, reporting requirements under Article 4 should be clear not to require divulgement of business confidential or trade secrets of VTSPs.

Taking these points into consideration, CCIA recommends (i) that the proposed rules -- particularly Article 2 and Article 3 -- be adjusted to allow VTSPs to “make efforts” towards securing reliability “to the extent they control elements of the network;” (ii) VTSPs should not be required to consult ISPs on traffic route management but “make efforts” to provide advance notice “to the extent possible;” and (iii) the rules should encourage mutual cooperation between the two entities, and provide VTSPs leniency if the ISP is unwilling to accept commercially reasonable offers.

Second, the impetus behind the new rules appear to discriminately target major U.S. Internet services in a manner that conflicts with Korea’s international trade obligations. While it is expected that a few Korean companies will be within scope, the discriminatory intent of the law was apparent upon its introduction, and many Korean lawmakers and media have referred publicly to the new rules as the “Netflix law.” The scope of covered services was crafted through arbitrary standards in a manner that excludes other online services that compete with U.S. VTSPs, including content streaming services being offered by the ISPs' own subsidiaries. This would conflict with Korea’s commitments with respect to national treatment and most-favoured nation clauses in KORUS and under relevant WTO agreements. Furthermore, the new onerous requirements on appointing local representatives for every service that a designated VTSP provides in Korea would conflict with local presence commitments made in Article 12.5 of KORUS.

CCIA urges consistency with Korea’s international trade commitments that allows for the provision of cross-border services in a non-discriminatory, transparent manner. CCIA recommends that (i) the 1% minimum web traffic threshold be removed from the criteria to better meet the Korean government’s policy objective of providing stable and convenient services for all content and application services, while making a reasonable exemption for services with less than 1 million users; and (ii) the rules should explicitly allow VTSPs to design their networks in a way that allows the free flow of data and cross-border services trade without mandating local presence or physical infrastructure in Korea.

Based on these concerns, CCIA strongly encourages policymakers to reconsider the changes to the Telecommunications Business Act. At the least, additional revisions as noted to the Enforcement Decrees are necessary to provide adequate clarity for Internet services to continue offering service to Korean users.

Thank you for your consideration of these comments and work on these important issues.

Sincerely,

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