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April 30, 2012
ATTN: Cass Sunstein, Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Re: *Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities*

Dear Administrator Sunstein:

The Telecommunications Industry Association (“TIA”) hereby submits input to the Office of Information and Regulatory Affairs, Office of Management and Budget (“OMB”) in response to its request for input on current issues regarding Federal agencies’ standards and conformity assessment related activities,¹ specifically whether and how to supplement Circular A-119 (Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities).²

I. INTRODUCTION

TIA represents a large number of information and communications technology (“ICT”) companies and organizations in standards, government affairs, and market intelligence. A major function of TIA is the writing and maintenance of voluntary industry standards and specifications, as well as the formulation of technical positions for presentation on behalf of the United States (“U.S.”) in certain international standards fora. TIA is accredited by American National Standards Institute (“ANSI”) to develop voluntary industry standards for a wide variety of telecommunications products and sponsors more than 70 standards

¹ *Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities*, Office of Mgmt. & Budget, 77 Fed. Reg. 19357-19360 (March 30, 2012) (“RFI”).

² Office of Mgmt. & Budget, Exec. Office of the President, OMB Circular A-119 Revised, *Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities* (1998) (“OMB Circular A-119”).

formulating committees. These committees are made up of over 1,000 volunteer participants, including representatives from manufacturers of telecommunications equipment, service providers and end-users, as well as local, state and federal government entities.

The member companies and other stakeholders participating in the efforts of these committees and sub-groups have produced more than 3,000 standards and technical papers that are used by companies, consultants, and governments to produce interoperable products around the world, a number of which are incorporated by reference into the Code of Federal Regulations (“CFR”). TIA is and has been a standards development organization (“SDO”) since its inception in 1988, and is one of the largest SDOs accredited by ANSI. TIA's standards development activities have both a national and global reach and impact. TIA is one of the founding partners and also serves as Secretariat for 3GPP2 (a consortium of five SDOs in the U.S., Japan, Korea, and China with more than 65 member companies) which is engaged in drafting future-oriented wireless communications standards.³ TIA also is active in the formulation of U.S. positions on technical and policy issues, administering four International Secretariats and 16 U.S. Technical Advisory Groups (“TAGs”) to international technical standards committees at the International Electrotechnical Commission (“IEC”).

TIA’s standards committees create consensus-based voluntary standards for numerous facets of the ICT industry, for use by both private sector interests and government, which fall within the purview of the Petition.⁴ Among other areas, TIA’s standards committees develop protocols and interface standards relating to current U.S. Government technology

³ See 3GPP2, About 3GPP2, available at http://www.3gpp2.org/Public_html/Misc/AboutHome.cfm (last visited May 26, 2011).

⁴ TIA publishes an annual report that includes the latest actions taken by each respective TIA engineering committee toward the development of standards for the advancement of global communications. See TIA, Standards & Technology Annual Report (September 2010), available at http://tiaonline.org/standards/about/documents/StarReport_09-10.pdf.

priorities such as Smart Grid,⁵ health care ICT,⁶ and emergency communications infrastructure⁷ in such areas as fiber optics, public and private interworking, telecommunications cable infrastructure, wireless and mobile communications, multimedia and voice over internet protocol (“VoIP”) access, as well as vehicular telematics.

TIA’s association members and others come to TIA to develop standards that promote efficiency and interoperability, enhancing industry collaboration to solve market-driven demands and customer needs. This enables access to new technologies and markets, helps diffuse innovative solutions across the industry while maintaining respect for intellectual property rights and supporting incentives for companies to further invest in related R&D. TIA’s process also creates opportunities for further competition among differentiated implementations and products, which provides stimulus for more innovation and choice for customers and users.

TIA supports government efforts towards ensuring that public authorities can more easily acquire ICT services, applications and products that meet their specific requirements. We encourage the participation of Federal agencies in our technical standards-setting process, and greatly appreciate the value of the public-private sector partnership that exists in the U.S. with regards to standards. TIA also believes that the U.S. Government serves an important role in terms of advocating the “multiple path” approach to developing international standards, raising concerns when there may be trade-related or other

⁵ TIA’s TR-50 (Smart Device Communications) is responsible for the development and maintenance of access agnostic interface standards for the monitoring and bi-directional communication of events and information between smart devices and other devices, applications or networks. *See* <http://tr50.tiaonline.org>.

⁶ TIA’s TR-49 (Healthcare ICT) is responsible for development and maintenance of standards for the healthcare ICT applications which involve medical devices, network infrastructure, applications, and operations support. *See* <http://tr49.tiaonline.org>.

⁷ Engineering Committee TR-8 formulates and maintains standards for private radio communications systems and equipment for both voice and data applications. TR-8 addresses all technical matters for systems and services, including definitions, interoperability, compatibility, and compliance requirements. The types of systems addressed by these standards include business and industrial dispatch applications, as well as public safety (such as police, ambulance and firefighting) applications. *See* <http://tr8.tiaonline.org>.

standards issues that arise among different nations and as a stakeholder in the standards development process in technology areas where it has a specific interest.

For governmental entities, the ability to partake in voluntary consensus standard development has many benefits and is consistent with goals of the U.S. Government as reflected in the National Technology Transfer and Advancement Act and OMB Circular A-119. TIA believes that the OMB Circular has been very effective, and supports its recognition of the value of “voluntary consensus standards”. This term is defined broadly to include standards from ANSI-accredited SDOs and also a wide range of consortia, further evidencing the U.S. Government's recognition of the value of having competition and diversity among standards-setting organizations.

II. RESPONSES TO OFR QUESTIONS

Agency Implementation of Circular A-119 in Rulemakings

- **Are Federal agencies generally following the guidance set out in the Circular and providing an adequate explanation of how they considered standards and conformity assessment-related issues in the preambles to rulemakings?**

TIA members have found in their experiences that some Federal agencies follow the guidance set out in OMB Circular A-119 that sets forth a time-tested and effective framework for considering standards and conformity assessment-related issues. That said, adherence to OMB Circular A-119 varies from Federal agency to Federal agency. As evidenced by this RFI, TIA believes that OMB understands the importance of OMB Circular A-119. NIST along with OMB (as a gatekeeper for all Federal regulations which include information collection requirements under the Paperwork Reduction Act⁸) are encouraged to continue to reinforce the importance of each Federal agency implementing OMB Circular A-119.

Standardization Activities

- **What factors should agencies use in evaluating whether to use voluntary nonconsensus standards in regulation, procurement solicitations, or other nonregulatory uses? OMB also invites comments on the respective roles of voluntary consensus standards vs. voluntary non-consensus standards for agency responsibilities in rulemaking, procurement, and other activities.**

TIA strongly encourages Federal agencies to use voluntary, consensus standards (as opposed to non-consensus standards) whenever possible in regulation, procurement solicitations, or other non-regulatory uses. We believe that voluntary consensus-based

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See 44 U.S.C. Part 35.

standards are a more effective tool for organizations of all sizes, private and governmental, and better support innovation as well as increased productivity. Voluntary consensus standards developed under the open ANSI process provide assurance to those considering adopting the standards that the standards represent the agreement amongst a majority of key industry players within a sector. This process also guarantees that any organization or individual – including a Federal agency – has the opportunity to engage in the process and work with other stakeholders to shape the standard as needed, something that non-consensus standards cannot guarantee. Because of this crucial characteristic – consensus – these standards promote efficiency and interoperability by enhancing industry collaboration to solve market-driven demands and customer needs. Voluntary consensus standards also enable access to new technologies and markets by (i) helping diffuse innovative solutions across the industry while maintaining respect for intellectual property rights and supporting incentives for companies to further invest in related R&D,⁹ and (ii) creating opportunities for further competition among differentiated implementations and products, which in turn provides stimulus for more innovation and choice for customers and users.

Conformity Assessment

- **In conjunction with NIST’s efforts to update its conformity assessment guidance, should a supplement to Circular A-119 be issued to set out relevant principles on conformity assessment? If so, what issues should be addressed in such a supplement?**

TIA supports enhanced Federal guidance on the conformity assessment process. Such guidance could (a) set out relevant principles on conformity assessment, and (b) be utilized by Federal agencies to reduce the time and expense unnecessarily depleted in the process.

⁹ TIA, *Intellectual Property Rights Standing Committee Paper on Open Standards* (Jun. 20, 2008), available at http://www.tiaonline.org/standards/about/documents/TIA-IPR_20080620-003_TIA_OPEN_STANDARDS.pdf.

TIA supports a proposed OMB Circular A-119 supplement's promotion of transparency, fairness, and disclosure of conflicts of interest as essential characteristics of the conformity assessment process. We believe that this important inclusion will add a heightened level of trust amongst those involved in the process and will increase competition.

Protection of Copyright Associated With Standards

- **Is lack of access to standards incorporated by reference in regulation an issue for commenters responding to a request for public comment in rulemaking or for stakeholders that require access to such standards? Please provide specific examples.**

TIA strongly believes that currently, there is reasonable access to standards which are incorporated by reference (“IBR”), and is not aware of any issues related to lack of access to standards IBR that have arisen in a rulemaking or for stakeholders that require access to such standards. We believe that numerous statements of policy from the Federal government reflect a similar understanding on the part of the Administration and Federal agencies. We urge OMB to consult the December 2011-adopted recommendations of the U.S. Administrative Conference (USAC),¹⁰ which states that:

“Incorporation by reference allows agencies to give effect to a strong federal policy, embodied in the National Technology Transfer and Advancement Act of 1995 and OMB Circular A-119, in favor of agency use of voluntary consensus standards. This federal policy benefits the public, private industry, and standard developers.”¹¹

¹⁰ The Administrative Conference of the U.S. is an independent federal agency dedicated to improving the administrative process through consensus-driven applied research, providing nonpartisan expert advice and recommendations for improvement of federal agency procedures. Its membership is composed of innovative federal officials and experts with diverse views and backgrounds from both the private sector and academia. TIA believes that the OFR should regard the USAC recommendations as the Executive's position on IBR.

¹¹ *Adoption of Recommendations*, Administrative Conference of the U.S., 77 Fed. Reg. 2257 (Jan. 14, 2012) (citations omitted) (“USAC Recommendations”).

TIA wishes to unequivocally state that the term “reasonably available” does not mean that the information must be available “for free” nor does it necessarily mean that must be “available to anyone online,” as it has been recently argued in a petition to the Office of the Federal Register.¹² TIA holds the position that the text of standards should be made available to any party on a reasonable basis without unreasonable restrictions or conditions on access to the text of a standard. We emphasize that, consistent with U.S. copyright law,¹³ the contents of a standard are the intellectual property of the developing organization, entitling that developing organization to associated rights which cannot be removed without just compensation. Therefore, when a standard is incorporated into some other creation, intellectual property rights attached to it should be viewed no differently than the intellectual property rights of other aspects of the creation. To block these rights from all standards which are IBR would put a Federal agency on the “slippery slope” of picking classes of rights holders that should and should not enjoy copyright protections.

Furthermore, TIA believes that IBR, as it is currently implemented, is consistent with the National Technology Transfer and Advancement Act of 1995¹⁴ as well as OMB Circular A-119, which states, in response to the question “how should my agency reference voluntary consensus standards?”:

“Your agency should reference voluntary consensus standards, along with sources of availability, in appropriate publications, regulatory orders, and related internal documents. In regulations, the reference must include the date of issuance. For all other uses, your agency must determine the most appropriate form of reference, which may exclude the date of issuance as long as users are elsewhere directed to the latest issue. *If a voluntary standard is used and published in an agency*

¹² See *Announcement of a petition for rulemaking and request for comments*, Office of the Federal Register, National Archives and Records Administration, 77 Fed. Reg. 11414 (February 27, 2012).

¹³ See 17 U.S.C. *et al.*

¹⁴ See NTTAA.

document, your agency must observe and protect the rights of the copyright holder and any other similar obligations [emphasis added].”¹⁵

We also agree with the National Science and Technology Council’s acknowledgment that “the text of standards and associated documents should be available to all interested parties on a reasonable basis, which may include monetary compensation where appropriate.”¹⁶ Further, we concur with the recommendations recently adopted by the U.S. Administrative Conference, which include the following:

“If copyright owners do not consent to free publication of incorporated materials, agencies should work with them and, through the use of technological solutions, low-cost publication, or other appropriate means, promote the availability of the materials *while respecting the copyright owner’s interest in protecting its intellectual property [emphasis added].”¹⁷*

The adverse effect of the Federal government requiring all standards IBR to be made available for free must not be understated. Under the current standardization system in the U.S., market-driven open standards help promote competition and innovation, and such standards are developed or ratified through a voluntary, open and consensus-based process. Implementing a blanket policy that all standards IBR are to be made available for free would seriously jeopardize this ecosystem of trust through which companies and governmental entities can convene to create standards for industry-wide use.¹⁸ The fees charged by SDOs for electronic versions of some standards are used to support the

¹⁵ Office of Mgmt. & Budget, Exec. Office of the President, OMB Circular A-119, *Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities* (1998).

¹⁶ See Subcommittee on Standards, Nat’l Sci. & Tech. Council, Exec. Office of the President, *Federal Engagement in Standards Activities to Address National Priorities: Background and Proposed Recommendations* at 11 (Oct. 10, 2011).

¹⁷ USAC Recommendations at 2258.

¹⁸ We note that the information and communications technology (ICT) sector, which TIA is one of two ANSI-accredited SDOs for in North America, is widely considered to be one of the most successful sectors in standardization.

continued activity of those standards organizations. To remove the ability to collect and protect these fees for protected standards referenced – even those potentially referenced without the knowledge or consent of the SDO – would severely curtail the development of further standards to the detriment of the Federal government and all other stakeholders. Such an undertaking by the Federal government would additionally result in the ceasing of standard development in some areas, which runs wholly counter to the NTTAA and OMB Circular A-119, along with the Administration’s current policy on standards. Furthermore, the USAC has concluded that “[e]fforts to increase transparency of incorporated materials may conflict with copyright law and with federal policies recognizing the significant value of the public-private partnership in standards.”¹⁹

- **What are the best practices for providing access to standards incorporated by reference in regulation during rulemaking and during the effective period of the regulation while respecting the copyright associated with the standard?**

Currently, SDOs including TIA offer completed standards at a reasonable price to any interested party, regardless of the standard’s involvement in the rulemaking process or the stage the rulemaking process is at. Federal agencies can best enhance access to standards which are IBR by consistently publicly indicating in proposed and adopted rules where to access those standards being IBR.²⁰ This is consistent with language already in OMB Circular A-119.

- **What are the best practices for incorporating standards by reference in regulation while respecting the copyright associated with the standard?**

TIA believes that the current policy of the Federal government in the NTTAA and OMB Circular A-119 best reflects measures that can be taken for incorporating standards by reference in regulation while respecting the copyright associated with the standard.

Voluntary Consensus Standards and Cost-Benefit Analysis

¹⁹ USAC Recommendations at 2258.

²⁰ TIA standards are available from HIS, Inc. See <http://www.ihs.com/>.

- **What resource and other costs are involved in the development and revision of voluntary standards?**

Significant resources and costs are invested in the development and revision of voluntary standards. While the level of resources and costs required varies from sector to sector, investment in the development of standards generally reflects the importance of standards to that sector. In the case of the ICT industry, standards are crucial to maintaining a competitive marketplace that has proven to be, aside from one of the most dynamic industries in the U.S.' economy, a cornerstone for the general health of the economy. TIA notes its process for developing voluntary consensus standards as follows:

1. Standards projects and technical documents at TIA are formulated according to the guidelines established in the association's Engineering Manual.²¹ Any potential project is initiated by a technical contribution to one of the engineering committees or subcommittees from an individual requesting the creation of a new standard or technical document in a particular area of technology.
2. If there is support for this contribution, and a number of people are willing to work on the project, a Project Initiation Notice (PIN) form is completed and submitted for approval to TIA. After the project is approved for initiation, the engineering committees and their subcommittees work to further develop the technical parameters of the project. When the proposed standard or technical document is near completion, the formulating engineering committee circulates the draft of the document on a ballot called a "Committee Ballot." The purpose of this ballot is to identify any unresolved issues and to establish consensus within the formulating group. Every effort is made to resolve comments received. During this phase of the standards-making process, the draft of the document is not released to the

²¹ TIA, *TIA Engineering Manual* (Oct. 2009) available at <http://www.tiaonline.org/standards/procedures/manuals/engineering.cfm>.

general public.

3. If the document is intended to be an American National Standard, the proposed draft must be circulated as an industry-wide ballot, also known as an "Industry Ballot." During the balloting period, any interested party may comment. Every attempt is made to resolve comments received at this phase of the balloting, and when necessary, commenters are apprised of the appeals process. During this phase of balloting, a copy of the draft standard may be acquired by non-participants. After the final draft of the document has obtained industry consensus, the document is forwarded with all its balloting information to a review group at TIA called the Telecommunications Standards Subcommittee (TSSC). If the document is intended to be an American National Standard, the same information is forwarded to the ANSI Board of Standards Review (BSR) with request for approval.
4. The balloting information is then reviewed by TSSC, and supporting documents are checked to see if TIA due process and other requirements have been met. After this review and upon approval of the BSR, the document is approved for publication as a TIA Standard.
5. A standard which is an American National Standard must be reviewed every five years to ensure it remains current. During this five-year period, a standard may be reaffirmed, modified or rescinded.

Finally, TIA notes that, like numerous other SDOs, it is a non-profit organization and fees collected as standard committee participation dues along with fees for standards over which TIA has copyright provide support for the staff necessary to continue to operate.

- **What economic and other factors should agencies take into consideration when determining that the use of a voluntary standard is practical for regulatory or other mission purposes?**

TIA believes that Federal agencies should fully appreciate the role standardization plays in the U.S. economy. Because standardization is a form of economic self-regulation, it can relieve the government of the responsibility for developing detailed technical specifications while ensuring that voluntary consensus standards serve the public interest, saving resources that can be used to serve the public interest in other ways. Standards may be used to define an acceptable level of performance, and through participation in the process, a governmental entity can work to ensure that an adequate level of service is offered to the public in a particular area. In some limited instances, the government has made standards legally binding to assure a minimum level of public safety through safe harbors.²² In addition, standards may also be used by government entities as valuable sources of scientific and technical information developed with the assistance of private sector experts, allowing for agencies to use standards as a resource for advanced technical information without first-hand independent knowledge of research in the area.

²² For example, Section 107(a)(2) of CALEA contains a safe harbor provision, stating that "[a] telecommunications carrier shall be found to be in compliance with the assistance capability requirements under section 103, and a manufacturer of telecommunications transmission or switching equipment or a provider of telecommunications support services shall be found to be in compliance with section 106 if the carrier, manufacturer, or support service provider is in compliance with publicly available technical requirements or standards adopted by an industry association or standard-setting organization, or by the Commission under subsection (b), to meet the requirements of section 103." 47 U.S.C. § 1006(a)(2). Subcommittee TR-45.2 of TIA, along with Committee T1 of the Alliance for Telecommunications Industry Solutions, developed interim standard J-STD-025 to serve as a "safe harbor" for wireline, cellular, and broadband PCS carriers and manufacturers under section 107(a) of CALEA. The standard defines services and features required by wireline, cellular, and broadband PCS carriers to support lawfully authorized electronic surveillance, and specifies interfaces necessary to deliver intercepted communications and call-identifying information to a law enforcement agency. *See* TIA, Communications Assistance for Law Enforcement Act (CALEA), available at <http://www.tiaonline.org/standards/technology/calea/> (last visited February 22, 2011).

- **How often do standards-developing bodies review and subsequently update standards? If standards are already incorporated by reference in regulations, do such bodies have mechanisms in place for alerting the relevant agencies and the public, especially in regard to the significance of the changes in the standards?**

As an ANSI-accredited SDO, TIA complies with the ANSI *Essential Requirements*.²³ As noted above, a standard which is an American National Standard must be reviewed every five years to ensure it remains current. During this five-year period, a standard may be reaffirmed, modified or rescinded.

In the event a standard is updated, particularly in the event that the update is significant, TIA makes timely efforts to inform the relevant Federal agency of these updates. In the event that an update is considered non-administrative, TIA files petitions for updating the standard.

Using and Updating Standards in Regulation

- **Should OMB set out best practices on how to reference/incorporate standards (or the relevant parts) in regulation? If so, what are the best means for doing so? Are the best means of reference/incorporation context-specific? Are there instances where incorporating a standard or part thereof into a regulation is preferable to referencing a standard in regulation (or vice versa)?**

TIA supports OMB specifying best practices for IBR into regulations. We believe that the best means to accomplish specifying these best practices would be to issue guidance to OMB Circular A-119 that is consistent with the current form of OMB Circular A-119 as well as other Federal policies already in place which are consistent with the Circular, as noted above. This supplement should either directly endorse or at least mirror the recommendations made by the USAC.²⁴ In addition, OMB should ensure that it does not unnecessarily add to the rulemaking process by extending review periods.

²³ See ANSI ERs.

²⁴ See USAC Recommendations.

TIA wishes to note its belief that no blanket determination can be made on whether it is appropriate to reference or incorporate standards into regulations, and we agree that the best means of incorporation may be context-specific. For each referencing or incorporation, the relevant agency should be entitled to make a case-by-case determination of whether the referenced material is “reasonably available,” based on many factors which will be unique to the agency and the industries that it regulates.²⁵ TIA believes that the decision to allow for the IBR of copyrighted material may be appropriate and are due deference.²⁶ By allowing for this flexibility, case-by-case determinations can be made by Federal agencies that possess the critical expertise in their fields of jurisdiction that will result in the most informed and appropriate decisions regarding the appropriateness of IBR.

- **Should an OMB supplement to the Circular set out best practices for updating standards referenced in regulation as standards are revised? If so, what updating practices have worked well and which ones have not?**

TIA supports the Federal government supplementing OMB Circular A-119 with best practices for updating standards referenced in regulation as standards are revised. We believe that updating practices required by the ANSI process as detailed above, or similar guidelines which would direct Federal agencies to periodically review standards IBR through a transparent process that allows for public comment, would be extremely helpful to increasing the effectiveness of IBR.

²⁵ See, e.g., 5 U.S.C. 552(a)(2)(E) (stating that the Director of the Federal Register is entitled to make a case-by-case determination of whether the referenced material is “reasonably available.”).

²⁶ The *Chevron* standard applies when an agency (in this case, the OFR is the secretariat for the Administrative Committee of the Federal Register, a component of the National Archives and Records Administration, an independent Federal agency) is interpreting a statute it has been charged with administering through some order imbued with the force of law. The standard of review under *Chevron* consists of two steps: first, the reviewing court must ask whether, after “employing traditional tools of statutory construction,” it is evident that “Congress has directly spoken to the precise question at issue.” *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842, 843 n.9 (1984). Then, if the statute is found to be “ambiguous,” the court will uphold the agency’s interpretation as long as it is “based on a permissible construction of the statute.” *Id.* at 843.

TIA notes that we endorse, after full consideration of the costs and benefits, the use of “shot clocks,” or automatic updating of a regulation to reflect an updated standard after public notice and a set period of time, when appropriate for the updating of standards referenced in the CFR. This mechanism could serve as an effective and streamlined way to update revised standards in circumstances where the update is not significantly substantive.

- **Is there a role for OMB in providing guidance on how Federal agencies can best manage the need for relevant regulations in the face of changing standards?**

TIA believes that OMB, as the responsible entity for Circulars, would be an appropriate entity to address how Federal agencies can best manage the need for relevant regulations in the face of changing standards.

- **How should agencies determine the cost-effectiveness of issuing updated regulations in response to updated standards?**

TIA believes that this determination should be made on a case-by-case basis, and TIA does not believe that each and every update to a standard that has been IBR will require the issuance of a regulation. Ideally, this cost-benefit analysis will consider a high number of factors, many of which are specific to the Federal agency and the industry or industries that it regulates.

- **Do agencies consult sufficiently with private sector standards bodies when considering the update of regulations that incorporate voluntary standards, especially when such standards may be updated on a regular basis?**

Federal agencies do consult with private sector standards bodies when considering the update of regulations that incorporate voluntary standards. However, we believe that these consultations should be more frequent and more transparent. While TIA has experienced robust engagement from Federal agencies on some standards which are IBR, we have seen a lack of engagement on others. We urge the Federal government to strive for increased consultation with SDOs across all agencies.

Use of More Than One Standard or Conformity Assessment Procedure in a Regulation or Procurement Solicitation

- **Should OMB provide guidance to agencies on when it is appropriate to allow the use of more than one standard or more than one conformity assessment procedure to demonstrate conformity with regulatory requirements or solicitation provisions?**

TIA believes that it would be helpful for OMB to provide agencies with best practices on when it is appropriate to allow the use of more than one standard or more than one conformity assessment procedure to demonstrate conformity with regulatory requirements or solicitation provisions, but that, as with IBR decisions, a case-by-case analysis should be employed that considers an expansive number of factors, many of which are specific to the Federal agency and the industry or industries that it regulate. In some instances a single standard or conformity assessment procedure will be preferable, while in others more than one will be needed. U.S. industry competitiveness is directly linked to standardization, particularly in sectors such as ICT that are dynamic and technology-driven. The U.S. Patent & Trademark Office has noted that the U.S. is a market-driven, highly diversified society, and its standards system encompasses and reflects this framework, which extends to adoption of standards.²⁷

TIA believes that within the ICT sector multiple standards are often needed within the same technology area in order to provide choice, address different user requirements, or respond to marketplace needs (such as home networks, cellular standards, database access models, document formats, Web programming models, and digital image and media formats). Regulatory burdens would have a particularly inflated effect on ICT standardization due to the fast-paced nature of this sector's development. TIA submits that it is the ICT market – not regulations – that should primarily determine which

²⁷ See World Intellectual Property Organization (WIPO) Standing Committee on the Law of Patents, *Statement of the United States Patent & Trademark Office* (March 25, 2009), available at <http://publicaa.ansi.org/sites/apdl/Documents/Standards%20Activities/Critical%20Issues/Open%20Standards/USPTO-WIPO-Statement.pdf>

standard or standards are adopted and used in the industry. The current procedures, internal to ANSI as defined by the *ANSI Essential Requirements*,²⁸ reduce unnecessary conflict and duplication have worked and are sufficient to encourage to coordination among ICT standards bodies when appropriate.

Other Developments

- **Have there been any developments internationally -- including but not limited to U.S. regulatory cooperation initiatives -- since the publication of Circular A-119 that OMB should take into account in developing a possible supplement to the Circular?**

TIA urges OMB to ensure that any changes or supplements to OMB Circular A-119 reflect the priority for U.S.-based technologies continued success in the global marketplace. TIA standards are used throughout the world across a number of technologies, as well as other areas such as building codes. To this end, OMB should work with other Federal agencies as well as North American SDOs and companies to ensure that any standards, regardless of where they are developed, be viewed as “international” standards if they are globally adopted.

In addition, aside from the reasons stated above, we urge any supplement to OMB Circular A-119 to emphasize policies that encourage open and voluntary participation for any interested party. Unfortunately, there are other parts of the globe where foreign input is disregarded, and the standardization system is effectively used as a way to give preference to parties physically located within a country. We believe that the U.S. government is in alignment with other standardization stakeholders that such policies stifle innovation and investment, and ask that any supplement to OMB Circular A-119 continue to reflect this understanding of the global standards system.

²⁸ ANSI, *ANSI Essential Requirements: Due process requirements for American National Standards* (Jan. 2010), available at www.ansi.org/essentialrequirements (“ANSI ERs”).

- **Are there other issues not set out above that OMB might usefully seek to address in a supplement?**

TIA urges OMB to issue supplemental guidance to OMB Circular A-119 only after careful consideration. We do not support the widening of the scope of this inquiry at this time.

III. CONCLUSION

For the foregoing reasons, TIA urges the OMB to adopt the recommendations above. We urge OMB to contact us with any questions or concerns you may have with our positions as it considers this proposal.

Respectfully submitted,

TELECOMMUNICATIONS INDUSTRY ASSOCIATION

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