



International Chamber of Commerce

The world business organization

**Policy
positions**



Prepared by the ICC Commission on
the Digital Economy

ICC policy positions on World Conference on International Telecommunications 2012 (WCIT-12)

Executive Summary:

- WCIT-12 is a critical opportunity to ensure that the International Telecommunications Regulations (ITRs) can support the future development of telecoms markets, services and technological innovation. To do this, given the contemporary pace of market change, it is vital for the ITRs to be focused on general strategic and policy issues relating to the provision of international telecommunications services, rather than on specific regulatory and technical matters.
- Detailed rules for the establishment and settlement of accounting rate arrangements are no longer relevant in the contemporary competitive international marketplace, and should be significantly amended or removed.
- The scope of the ITRs must be carefully considered, to avoid undermining pro-competitive policies that have fuelled the massive growth of the telecommunications industry since 1988. Likewise, changes which might create uncertainty for market participants—such as the development of new ITU arbitration or dispute resolution authority—should be avoided, particularly given the potential unintended effects for end-users.
- The ITRs should not address areas of Internet policy, such as international Internet connectivity and the allocation of Internet addresses. Expanding the regulations in this way would not be consistent with the Tunis Agenda agreed by heads of state at the UN World Summit on the Information Society (WSIS) in 2005—and would risk undermining the multistakeholder model of Internet governance which has underpinned the success of the Internet to date.
- In this context, ITU members should remain cognizant of the appropriate limits of the ITRs. Pro-competitive policies should be used to achieve more efficient and balanced Internet interconnection flows, rather than using the ITRs to support regulation that could suppress traffic flows and investment incentives. Moreover, fraud and other criminal matters are more appropriately addressed through national law and regulation.

Background on WCIT-12 and ITRs:

- The 193 member countries of the ITU will meet at a World Conference on International Telecommunications in December 2012 (WCIT-12)¹ to revise the International Telecommunication Regulations (ITRs), a treaty-level document establishing policies governing international telecommunications services between countries.²
- The current ITRs were negotiated in 1988, when international telecommunications services in most countries were provided by monopoly, government-owned carriers, and services were predominantly voice, rather than data and Internet-based services. Since then, the global telecommunications industry has been transformed by privatization and market liberalization in most countries, huge increases in traffic volumes, the rapid expansion of new services and technologies, the spectacular growth of the Internet, and the emergence of non-traditional Internet-based service providers.
- In particular, the global Internet has since become the most powerful communications medium and engine for economic growth in our time, and is delivering huge benefits to culture, political discourse and economic progress in countries at all levels of development. This global “network of networks,” serving 1.8 billion users in 2010, which is expected to grow to 5 billion users by 2020, has evolved largely outside traditional telecommunications regulatory frameworks in response to dynamic technological change, and to business user and consumer demand. With the rapid expansion of mobile broadband now providing an even wider range of Internet-based services to much greater numbers of potential users, the Internet appears likely to continue to transform our world for many years to come.
- Contributions submitted in the preparatory meetings for WCIT-12 reflect widely varying views on the nature and extent of possible changes to the ITRs to take account of this greatly changed environment. While some countries believe that the ITRs should set forth high-level strategic and policy principles that could adapt to further changes in the market, others request the inclusion of expanded regulatory provisions of a detailed and specific nature in the ITRs to address a wide range of new issues and services, including the Internet, or even to include the intergovernmental regulation of content (e.g., spam).

¹ WCIT-12 to take place 3-14 December 2012

² <http://www.itu.int/en/wcit-12/Pages/default.aspx>

ICC Objectives for WCIT-12:

- ICC is a longstanding supporter of the liberalized telecommunications policies that have stimulated the expansion of communications networks and services, and has encouraged broad economic growth in countries at all levels of development. ICC is of the view that the ITRs should support future changes in markets, services and technologies by focusing on general strategic and policy issues relating to the provision of international telecommunications services, and the ITRs should not address specific regulatory and technical matters that may become quickly obsolete due to the pace of technological development and market change.
- The objective of WCIT-12 should be to produce a treaty-level document setting forth key principles for international cooperation in providing these services, rather than mandating or encouraging new regulation, or addressing technical issues. Such detailed market-specific points are likely to be inappropriate for an international treaty, otherwise unnecessary or harmful, or quickly outdated in this highly dynamic industry.³
- In this context, ICC commends the approach adopted by Resolution 171 of the ITU Plenipotentiary Conference 2010 (PP-10) held in Guadalajara, Mexico, which affirms that the proposals for revision to the ITRs should be “in line with the scope and purpose of the ITRs as set out in Article 1,” stating that the ITRs establish general principles relating to the provision and operation of international telecommunications services. The resolution also emphasizes that proposals for revising the ITRs should “reflect, inter alia, strategic and policy principles, with a view to ensuring flexibility in order to accommodate technological advances.”
- Most provisions of the existing ITRs already reflect high-level principles that are sufficiently flexible to accommodate future changes in technology and which require few changes to implement the approach adopted by the ITU Plenipotentiary Conference. However, the current ITRs also include detailed rules for the establishment and settlement of accounting rate arrangements, which date back to the time when most international traffic arrangements were negotiated by government-owned monopoly carriers, rather than by private operators on a commercial basis, as they are today. Those provisions are no longer

³ Similarly, the Chief Technology Officers from 20 leading companies recently stated that the revised ITRs should reflect technology-neutral, high-level principles, and should be stable and enduring to reduce the need for future updates. They urged that revisions to the treaty should maintain “necessary flexibility to enable continued growth in services for the next 20+ years.” *CTO Meeting Communiqué*, Geneva, Switzerland, 25 October, 2011.

relevant in a competitive marketplace and should be significantly amended or removed.

- Special care should be taken not to adopt changes in the ITRs that may have the effect – however unintended – of impeding or limiting the pro-competitive developments and policies that have fuelled the massive growth of the telecom industry since 1988, with enormous benefits to ICC business community members and consumers throughout the world. In this respect, it is important not to prohibit market mechanisms which enable least-cost routing and other pro-competitive market mechanisms that serve as an important restraint on the level of international termination rates.
- Similarly, proposals for the ITU to become a dispute resolution forum for disagreements between operators would unnecessarily infringe on existing mechanisms for dispute resolution and inject uncertainty into commercial agreements. International telecommunications arrangements today are negotiated predominately by private parties and subject to the well-established legal principles and jurisdictional rules that govern all international commercial transactions. There is no indication that any existing or future issues related to these cross-border arrangements cannot be addressed through these existing procedures. To create new ITU arbitration or dispute resolution authority to govern these arrangements, which underpin international telecommunications services in all or virtually all countries, would cause considerable uncertainty in the marketplace and likely lead to reduced service levels and higher user prices.
- ICC is also opposed to proposals that the ITRs should address areas of Internet policy, such as international Internet connectivity and the allocation of Internet addresses. These issues are also outside the scope of the ITRs, and expanding these regulations in this way would not be consistent with the Tunis Agenda agreed by heads of state at the UN World Summit on the Information Society (WSIS) in 2005, which endorsed a multistakeholder approach to Internet governance at the national, regional and international levels. The recent OECD High Level Meeting on the Internet Economy emphasized that “continued support is needed for the multi-stakeholder environment, which has underpinned the process of Internet governance and the management of critical Internet resources (such as naming and numbering resources) and the various stakeholders should continue to play a full role in this framework.”⁴ ICC hopes that all stakeholders will continue to recognize this open, inclusive, and transparent multistakeholder approach that has built the highly successful global Internet of today.

⁴ *Communiqué on Principles for Internet Policy-Making*, OECD High Level Meeting, June 28-29 2011, Paris. See also, *OECD Council Recommendation on Principles for Internet Policy-Making*, Dec 13, 2011 (adopting recommendations in aforementioned communiqué).

For procedural and substantive reasons, the ITRs are an inappropriate instrument for Internet policy making, and would risk shifting the balance of the multistakeholder approach.

- Any proposals that the ITRs should mandate or encourage regulation of international Internet connectivity, including privately-negotiated peering arrangements—which currently are largely unregulated on both the domestic and international levels—would also fail to recognize that competitive market mechanisms have brought substantial changes in the global flow of Internet traffic, resulting in more efficient network usage, improved network performance and investment growth.⁵ In particular, local Internet exchange points in multiple countries have now supplanted much of the prior need for international connectivity, as in the case of Asia and Europe. ITU members should promote pro-competitive policies to achieve more efficient and balanced Internet interconnection flows, rather than use the ITRs to support regulation that could suppress traffic flows and investment incentives. Indeed, the proposed regulation of international Internet connectivity could have harmful unintended consequences, including the potential reduction in the free flow of information and connectivity to countries imposing regulation.
- A further potential concern is that some countries will attempt to include in the ITRs requirements for the payment by service providers in developed countries of “network externality” premiums for call termination in developing countries that would increase prices, decrease usage, and fail to achieve the claimed objective of increasing developing country network build-out. The OECD has warned that such measures will in fact constrain network expansion.⁶ Requiring payment of this premium only by service providers in developed countries also raises concerns regarding compliance with “most-favored nation” (MFN) and other non-discrimination obligations under the WTO agreements.
- Any proposals that the ITRs should include provisions related to cyber security or cyber crime are out of place in the WCIT, and should be rejected. Although ICC agrees that an international dialogue on cyber security policy and Internet norms is necessary and important, this discussion is already happening in many fora, including the ITU as a result of actions already taken at PP-10. These specific issues are outside the scope of the ITRs, which should remain concerned with issues regarding the international exchange of telecommunications traffic.

⁵ See ICC Discussion Paper, *Internet Backbone Interconnection Agreements*, July 27 2011.

⁶ OECD Working Party on Communication Infrastructures and Services Policy, *Network Externality Premiums and International Telecommunications Traffic Exchange*, April 15, 2009, at 9.

- Similarly, proposals to revise the ITRs to make mandatory specific ITU-T Recommendations are also in conflict with the appropriate voluntary nature of the recommendations. ITU-T Recommendations effectively recognize the importance of national sovereignty by being limited to voluntary, non-binding formulations of best practices and suggested policy positions. The WCIT is not the appropriate forum, and the ITRs are not the appropriate vehicle, to effect major changes to national sovereignty and the operations or authority of the ITU and its Sectors, which would be the effect of the proposals referenced here. The original ITRs have functioned effectively because they avoid detailed regulation and leave room for innovation by governments and industry. This flexibility is essential to the development of the exciting advances in telecom technologies and markets that have occurred since their adoption in 1988.
- Finally, ICC encourages countries to minimize the taxes imposed on telecommunications goods and services, and the ITRs could support this effort. In particular, the ITRs should discourage discriminatory taxes, such as those imposed solely on inbound international calls, due to the negative impact such taxes have on end users.⁷ Far from being luxuries, telecommunications goods and services bring the building blocks of opportunity to the global information-based economy. Increasingly, public policy is oriented towards connecting the unconnected in order to achieve 100% adoption of advanced telecommunications services. The ITRs can promote this goal by discouraging discriminatory taxes.

⁷ See, e.g., ITU Workshop on Taxation of Telecommunication Services and Related Products, Global Mobile Tax Review 2010/11 at 27-32, available at: http://www.itu.int/ITU-D/finance/work-cost-tariffs/events/tariff-seminars/Geneva_Taxation/pdf/Solomon-Session7_en.pdf.

The International Chamber of Commerce (ICC)

ICC is the world business organization, a representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world.

The fundamental mission of ICC is to promote trade and investment across frontiers and help business corporations meet the challenges and opportunities of globalization. Its conviction that trade is a powerful force for peace and prosperity dates from the organization's origins early in the last century. The small group of far-sighted business leaders who founded ICC called themselves "the merchants of peace".

ICC has three main activities: rules-setting, dispute resolution and policy. Because its member companies and associations are themselves engaged in international business, ICC has unrivalled authority in making rules that govern the conduct of business across borders. Although these rules are voluntary, they are observed in countless thousands of transactions every day and have become part of the fabric of international trade.

ICC also provides essential services, foremost among them the ICC International Court of Arbitration, the world's leading arbitral institution. Another service is the World Chambers Federation, ICC's worldwide network of chambers of commerce, fostering interaction and exchange of chamber best practice.

Business leaders and experts drawn from the ICC membership establish the business stance on broad issues of trade and investment policy as well as on vital technical and sectoral subjects. These include financial services, information technologies, telecommunications, marketing ethics, the environment, transportation, competition law and intellectual property, among others.

ICC enjoys a close working relationship with the United Nations and other intergovernmental organizations, including the World Trade Organization, the G20 and the G8.

ICC was founded in 1919. Today it groups hundreds of thousands of member companies and associations from over 120 countries. National committees work with their members to address the concerns of business in their countries and convey to their governments the business views formulated by ICC.

ICC Commission on the Digital Economy

Business leaders and experts develop and promote the continued and stable growth of the Digital Economy, and further adoption of its underlying ICT foundation, through regulatory advocacy of key business positions and best practices through ICC's Commission on the Digital Economy.

Through its members who are ICT users and providers from both developed and developing countries, ICC is recognized in expert circles as the global consensus voice for private sector expertise on policy matters that drive the Digital Economy. It also provides the ideal platform for developing global voluntary rules and best practices for this area of interest to companies worldwide. Dedicated to the expansion of secure ICT-facilitated trade, ICC champions the liberalization and regulatory harmonization that are required to achieve a free flow of information across all borders.

ICC led and coordinated the input of business around the world to the United Nations World Summit on the Information Society (WSIS), Geneva 2003, Tunis 2005, and continues this effort in the activities established in the Tunis Agenda through its initiative, Business Action to Support the Information Society (BASIS <http://www.iccwbo.org/basis>).



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Policy and Business Practices

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