

## TELECOMMUNICATIONS

Japan has made significant progress over the past several years promoting competition in the telecommunications sector through regulatory reform. The benefits of continued reform extend beyond the immediate goals of ensuring non-discriminatory treatment of foreign carriers and expanding opportunities for foreign equipment suppliers. In a networked global economy, the availability of cost-effective telecommunications services affects overall national competitiveness and an economy's ability to respond to global markets and technology trends.

The United States commends Japan for taking significant measures to promote competition in this sector in recent years. The United States also takes note of the recent progress Japan has made in the roll-out of advanced telecommunications technologies, including the deployment of broadband services. Like Japan, the U.S. Government considers broadband an important potential source of economic and social benefits. In furtherance of these goals, the United States urges Japan to consider even more far-reaching reforms that challenge the status quo, facilitating a transition to advanced networks and services, and allowing market forces to overtake obsolete regulations that hinder the development of a competitive environment.

The U.S.-Japan Telecommunications Working Group under this Initiative provides a timely opportunity to exchange views on emerging issues faced by both countries in the telecommunications sector. The United States therefore suggests that the Working Group enhance its dialogue by inviting experts from government and the private sector to provide their perspectives. In addition, the United States recommends that Japan implement the following reforms in CY2003:

### SUMMARY OF RECOMMENDATIONS

- **Deregulate Competitive Carriers:** Focus regulatory obligations on carriers with market power and eliminate or reduce filing and reporting requirements for carriers without market power.
- **Promote Transparent and Independent Regulation:** Take steps to transfer regulatory functions to an independent agency not under ministerial authority, and end MPHPT control over NTT business decisions.
- **Dominant Carrier Regulation and Competition Safeguards:** Reinforce dominant carrier safeguards to prevent abuses by carriers with market power.
- **Wireline Interconnection:** Complete the implementation of cost-oriented, transparent and reasonable interconnection rates that are necessary for a competitive local market and ensure that interconnection will be available to competitors on non-discriminatory terms.
- **Mobile Termination:** Establish a means to determine if rates for termination to the NTT DoCoMo network are set at reasonable, competitive levels and eliminate discrimination in retail rate-setting.
- **Rights of Way:** Continue to improve the rights of way regime through annual reviews of rights of way guidelines in order to promote competitors' installation of network facilities.

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**I. Eliminating Unnecessary Rules, Strengthening Regulatory Independence, and Promoting Greater Transparency.** In 2002, the Japanese Government took a bold step and called for a fundamental revision of the regulatory structure for telecommunications in Japan. Japan's Information and Communications Council recognized the importance of reducing burdensome regulations where possible for telecommunications service providers and overhauling outdated aspects of the regulatory regime such as the Type I/II classification. Elimination of unnecessary regulation will reduce the cost of doing business and allow carriers to provide more quickly the services that customers want. The United States recommends that the Ministry of Public Management, Home Affairs, Posts and Telecommunications (MPHPT) seek Diet approval in CY2003 of amendments to the Telecommunications Business Law that links the regulatory requirements on telecommunications service providers to the degree of market power they hold, thereby deregulating competitive carriers and maintaining sound dominant carrier regulation. Specifically:

A. Deregulating Competitive Carriers. The U.S. recommends that MPHPT seek Diet approval in CY2003 for amendments to the Telecommunications Business Law that would:

1. Grant MPHPT explicit authority to forbear from applying legacy regulations where competition in a market or market segment permits user interests to be achieved without government intervention, and where risks of competitive abuses are minimal.
2. Eliminate the Type I/II carrier distinction and classify carriers on a technology-neutral system, distinguishing carriers by whether or not they have market power, based on transparent criteria. Ensure that the deregulated status currently accorded to Type II carriers is incorporated into provisions affecting non-dominant carriers.
3. For non-dominant carriers in competitive markets, provide authority to:
  - a. Institute class licenses, which do not require any application by telecommunications service providers;
  - b. Replace tariff filing requirements with Internet-based public notifications, eliminating *ex-ante* MPHPT procedures;
  - c. Eliminate all filing and notification requirements for contract-based services;
  - d. For interconnection, entrustment, and other business arrangements between competitive carriers, eliminate all filing and notification requirements;

- e. For initial licensing requirements, eliminate requirements to provide detailed cost justifications, financial assumptions, and network planning information beyond the general scope of services and description of network;
- f. For network expansion, eliminate approval processes, and limit any notification requirements to brief general descriptions; and
- g. Permit carriers to acquire and use wavelength-based IRU's (indefeasible rights of use) for the provision of services.

B. Promoting Transparency and Strengthening Regulatory Independence. The United States observes that a number of cases have been brought to the newly established Telecommunications Business Dispute Resolution Commission. While the Commission has the capacity to challenge MPHPT regulations and decisions, its function is limited, particularly at the sensitive stage of early policy development. The United States recommends that Japan revisit the question of an independent regulator for the telecommunications sector to shield regulatory decision making from political influence and undue influence of the companies it regulates. The United States recommends that the Japanese Government take particular note of suggestions by Keidanren and other voices within Japan to:

1. Consider removing regulatory functions from the purview of a ministerial agency and move them to a fully independent organization;
2. Eliminate any requirement that the Japanese Government own a specified amount of NTT shares;
3. Eliminate ministerial interference in management operations of NTT, including business plans and personnel decisions;
4. Establish meaningful sanction authority (imposition of fines, payments of damages, license restrictions) to punish anti-competitive behavior;
5. In the area of equipment standards, work with telecommunications industry organizations which have assumed quasi-regulatory functions to ensure that those organizations adhere to the standards of transparency and non-discrimination – including in access to information about Telecommunications Technology Committee (TTC) processes and ability to comment on TTC policy proposal – that MPHPT follows in its industry study groups; and

6. As interim steps:
  - a. Consider measures to strengthening the operation and effectiveness of Japan's Dispute Resolution Commission, including steps to maximize transparency in dispute settlement actions;
  - b. Draft laws and ordinances in a manner that clearly explains the application of provisions, so as to minimize the need for extensive ministerial consultation; and
  - c. Refrain from applying public telecommunications rules to value-added suppliers, including Internet access and transport providers.

**II. Network Access and Promotion of Competition.** Competitors' access to bottleneck facilities is essential to promote both facilities-based and service-based competition, key Japanese Government goals. Relevant issues include:

- A. Dominant Carrier Regulation and Competition Safeguards. The United States recommends that MPHPT ensure that a revised Telecommunications Business Law retain obligations specific to carriers with a dominant position in Japan's market and give the Ministry the authority to enforce these obligations. In particular, the United States recommends that MPHPT:
  1. Ensure in law and/or regulation non-discriminatory cost-based access to poles, ducts, conduits, and rights of way and provide transparent pricing methodology for such access;
  2. Establish methods for evaluating pricing abuses by dominant suppliers (e.g. imputation tests) for voice as well as data services;
  3. Make the entry of NTT East and West into long-distance service conditional on broader access to their Operation Support Systems (OSS);
  4. Institute transparent means for evaluating whether leased lines are offered at reasonable, competitive rates;
  5. Consider rules (e.g. separate affiliate transaction rules) to ensure that a dominant supplier does not use revenues from a regulated service to subsidize a non-regulated service; and
  6. Develop competition-related performance metrics, including reporting requirements, and financial penalties for missing metrics. Such metrics should ensure that a dominant carrier treats competitors no less favorably than it treats itself or its affiliates in matters such as provisioning, quality of service, and repair and maintenance of all network services and facilities needed by competitors.

B. Wireline Interconnection. With the introduction in FY2000 of a long-run incremental costing (LRIC) methodology to calculate interconnection costs, Japan has taken an important step towards instituting greater accountability in the setting of interconnection rates and ensuring that competing carriers have access to the NTT East and West networks at cost-oriented, transparent, and reasonable rates. In continuing the reform of NTT's interconnection regime, the United States recommends that Japan:

1. In the spirit of its 2000 pledge to review interconnection rates and structure, remove non-traffic sensitive costs from metered interconnection rates, starting in FY2003;
2. To permit an objective evaluation of NTT East's and West's ability to absorb non-traffic sensitive costs out of existing monthly rates, require NTT East and West to document, in a transparent manner:
  - a. Precisely which costs are currently recovered from monthly subscriber line charges;
  - b. How such costs are identified and allocated between different services (e.g. ISDN, DSL, leased lines etc.); and
  - c. The assumptions behind such cost recovery, including *inter alia* cost recovery already achieved through initial subscriber line charges, depreciation rates used, and allowable profit margins.
3. Introduce an open, impartial, and objective process for use of traffic data for the LRIC model;
4. If traffic data period chosen diverges from the period corresponding to other aspects of the model, provide an opportunity to change other inputs as well, to reflect latest technology, equipment prices, and other costs;
5. Consider differentiating interconnection rates between regional carriers (through slower reductions for a higher-cost company, but not rate increases), taking into account dangers of (and methods to prevent) anti-competitive price squeezes;
6. If a long-term transition to alternate costing methodologies is to be considered, ensure competitors' continued participation in the process, and continued accountability and transparency both of NTT costs and MPHPT decisions used as a basis for setting rates; and
7. Consider transitioning to a bill-and-keep cost-recovery mechanism for a range of network access functions.

- C. Mobile Termination Rates. The United States recommends that Japan:
1. In accordance with Japan's Telecommunications Business Law and its 2002 commitment to ensure competitive interconnection rates for dominant wireless networks, institute an objective and transparent means for evaluating whether wireless termination rates are set at reasonable, competitive levels; and
  2. For wireline carriers seeking to interconnect with mobile operators, ensure that the current practice of permitting discriminatory treatment in the setting of retail rates is eliminated, consistent with Japan's WTO obligations.
- D. Non-Discrimination in Service Quality. For facilities where unbundling is required, the United States recommends that the Japanese Government require NTT East and West to include among their interconnection terms and conditions a service level agreements (SLA) similar to those offered to retail customers, specifying the period within which NTT East and West must respond to a disruption or deterioration of service.
- E. Multi-Party Interconnection. The United States recommends that the Japanese Government require NTT to permit interconnection for traffic destined to a third party terminating carrier regardless of whether interconnection agreements between originating and terminating carriers have been concluded.
- F. Expanding Menu of Basic Service Interconnection. The United States urges the Japanese Government require NTT regional companies to expand the list of functions available on an interconnection basis to include all services currently available to NTT customers, consistent with Japan's WTO Reference Paper commitments. In particular, require NTT East and West to provide emergency services (110) to competitors at cost-oriented, tariffed rates.
- G. Rights of Way. The United States urges Japan to continue to improve the rights of way regime through annual reviews of rights of way guidelines. In particular, the United States recommends that Japan:
1. Extend the interconnection obligations that MPHPT has placed on certain parts of NTT's networks (e.g. up to the manhole closest to the switch) to other bottleneck facilities, including conduits and ducts linking fiber loops and customer premises; and
  2. Ensure that lessors adhere to fair standards for burden-sharing associated with facility modification.

**III. Measures to Promote Advanced Technologies and Services.** The United States and Japan share a common policy goal to expand the adoption of the Internet and information technology in order to stimulate growth, increase productivity and raise the quality of life. The U.S.-Japan Telecommunications Working Group under this initiative provides a timely opportunity to exchange views on the experience of both countries, identify market-based approaches which contribute to expansion and use advanced telecommunications technologies, and facilitate the mutual understanding of regulatory processes in both countries. The United States proposes that, where possible, the Working Group enhance its dialogue by inviting experts from government and the private sector as guest speakers to share their views.