SEVENTH REPORT TO THE LEADERS ON THE U.S.-JAPAN REGULATORY REFORM AND COMPETITION POLICY INITIATIVE

July 5, 2008

The U.S.-Japan Regulatory Reform and Competition Policy Initiative was launched in 2001 as a bilateral forum to promote economic growth through regulatory reform. Each year, the Initiative addresses a broad range of sectoral and cross-sectoral issues, and outcomes are reported on an annual basis through the Initiative's Report to the Leaders. This Report is the seventh under this Initiative.

The Initiative is a two-way dialogue between the Governments of the United States and Japan. Both Governments exchanged recommendations in October 2007, following which four Working Groups established under this Initiative met to discuss reform in key sectors and areas such as intellectual property, distribution and customs procedures, competition policy, trade and investment-related measures, consular affairs, medical devices and pharmaceuticals, commercial law, privatization of public entities, and telecommunications/communications. The High-Level Officials Group also met in May 2008 to advance progress on a range of issues raised under this Initiative.

Following the Working Group and High-Level meetings, this Report to the Leaders was prepared to record progress and detail measures to be taken in the future that respond to each Government's recommendations.

In addition to bilateral issues, the Report highlights continuing work by both Governments to strengthen intellectual property rights protection and enforcement in the region and around the world. The two Governments affirm their determination to continue to increase this cooperation in bilateral, regional, and multilateral fora.

Both the Governments of the United States and Japan reaffirm their determination to further promote regulatory reform and, upon the request of either Government, will meet at mutually convenient times to address the measures contained in this Report.

REGULATORY REFORM AND OTHER MEASURES BY THE GOVERNMENT OF JAPAN

On the occasion of the annual meeting of the World Economic Forum in Davos in January 2008, Prime Minister Fukuda expressed Japan's intention to advance work toward market liberalization, including through new reforms in the area of foreign direct investment in Japan. In accordance with this basic policy direction outlined by Prime Minister Fukuda, the Government of Japan is pursuing a variety of measures.

This work includes a series of new policy steps endorsed by the Council on Economic and Fiscal Policy (CEFP) in June 2008, when it concluded its "Economic Growth Strategy." The Economic Growth Strategy seeks to strengthen Japan's growth potential in line with an open country policy of developing along with the global economy. This Strategy also incorporated measures proposed in May 2008 by the Expert Committee on FDI Promotion to help drastically expand direct investment into Japan. The Economic Growth Strategy was subsequently included in the Cabinet's "Basic Policies for Economic and Fiscal Reform 2008," approved in June 2008.

The Government of Japan is also considering and pursuing other reform-oriented measures. The Expert Committee on Structural Changes and the Japanese Economy, established under the CEFP, issued a report in July 2008 outlining the type of 'economic society' that Japan seeks over the coming decade in the global economy and setting a course toward it. In addition, the Council for the Promotion of Regulatory Reform (CPRR) issued an interim report in July 2008 in preparing to compile its third recommendations to the Government by the end of 2008. The Government of Japan will continue to actively advance regulatory reform, taking into account discussions and recommendations by the CEFP, the CPRR and the Expert Committee on FDI Promotion.

I. COMMUNICATIONS

A. Promotion of Competition

1. In October 2007, the Ministry of Internal Affairs and Communications (MIC) revised the "New Competition Promotion Program 2010", formulated in September 2006 as a detailed road map to develop an environment for fair competition in the broadband market, to respond appropriately to the rapid changes in the market environment. Based on this program, MIC has taken into consideration measures, such as (i) Review of Designated Telecommunications Facilities System (Dominant Regulations), (ii) Review of Calculation Method for Interconnection Charges, (iii) Competition Promotion in the Mobile Communications Market, (iv) Review of Universal Service System, (v) Development of Environments Intended to Ensure Network Neutrality, (vi) Enhancing Consumer Protection Measures, and is in the process of implementing measures in the order that they are concluded.

2. In May 2008, MIC revised the "Guidelines Concerning Applications of the Telecommunications Business Law and the Radio Law Pertaining to Mobile Virtual Network Operators (MVNO)" to promote market entry into the MVNO

business. These Guidelines were based on the “Mobile Business Revitalization Plan” which MIC released in September 2007 in order to develop an open mobile business environment that promotes the proliferation of diverse business models, to further revitalize the mobile business market, and to improve user benefits.

3. MIC has implemented the Competition Safeguard System to periodically verify the scope of designated telecommunications facilities and validity of fair competition requirements concerning the NTT Group since FY 2007. In February 2008, MIC released the results of verification (FY2007) and requested NTT East and West to take necessary measures in light of the results of the verification. This request was made to ensure fair competition in the telecommunications business, through an approach which requires NTT East and West to fully inform their subsidiaries not to use information acquired through required trustee business by NTT East/West and NTT DoCoMo for the purposes other than those for which it was originally intended, and also requires them to enforce this request.

4. In January 2008, the Information and Communications Council was consulted to deliberate on the interconnection charge for optical subscriber lines for FY 2008 and onward. The Council is deliberating applications from NTT East and West for revised charges with reductions from those for FY 2001 to FY 2007 of 9.1 percent for NTT East and 2.8 percent for NTT West.

B. **Fixed Interconnection**

1. Long-Run Incremental Cost (LRIC): In February 2008, MIC revised the Rules for Interconnection Charges regarding the calculation method for interconnection rates on the basis of the LRIC Model applicable in FY2008 and onward, taking into consideration opinions submitted through the public comment procedure and the report from the Information and Communications Council. In March 2008, MIC authorized interconnection rates for FY2008 calculated based on the revised rules, which began to be applied in April 2008. As a result, GC interconnection was set at 4.53 yen per 3 minutes, a decrease of 3.4 percent compared to the previous fiscal year; and IC interconnection was set at 6.41 yen per 3 minutes, a decrease of 2.1 percent compared to the previous fiscal year.

2. Next-Generation Network (NGN): In March 2008, the Information and Communications Council reported the "Next-generation network interconnection rules" based on the deliberation and opinions submitted though the public comment procedure. The report includes recommendations that it is necessary to designate NGNs of NTT East and West as Category I Designated Telecommunications Facilities and to impose unbundling obligation on such networks.

C. **Mobile Interconnection**

1. The interconnection rate of NTT DoCoMo has been reduced over the last 10 years,

and as a result, this rate has fallen to the low end of rates among developed countries using the Calling Party Pays system. MIC was notified in March 2008 that the average interconnection rate between the rate within the same NTT DoCoMo service area and the rate for a subscriber located in a distant NTT DoCoMo service area was revised at 11.0 yen per minute, a decrease of 2.1 percent compared to the previous fiscal year.

2. In March 2008, MIC revised the Rules for Telecommunications Business Accounting to separate incentives for the sale of terminals and incentives for the sale of communications services in accounting cost. In April 2008, MIC released the "Accounting Operation Guideline for Sales Incentives in Telecommunications Business" to ensure proper implementation of the rules, with a view to contributing towards clear determination of the telecommunications service cost, and with the expectation that the costs on which interconnection charges and wholesale telecommunications service prices are based will be calculated appropriately with the accounting methodology of this guideline.

3. In November 2007, regarding the case concerning the interconnection of telecommunications facilities between NTT DoCoMo and Japan Communications Inc., the Minister for Internal Affairs and Communications issued an award, deciding that setting of user charges should be “end-to-end charges” and it is appropriate that Japan Communications Inc. has the right to set the user charges.

D. Promotion of Advanced Technologies and Services

1. In December 2007, MIC revised the "Frequency Assignment Plan" for 90-108MHz and 170-222MHz in the VHF band and 710-770MHz in the UHF band, which will be vacated after the digitization of analog terrestrial television broadcasting, to make it available for "Broadcasting" including multimedia broadcasting to mobile devices, "Private Communication Systems" that realize broadband communication for ensuring public safety and security, "Telecommunications" including mobile phones and "Intelligent Transport Systems (ITS)"

2. For the introduction of broadband mobile wireless access systems using the 2.5 GHz band, in December 2007, MIC approved the establishment plans submitted by Wireless Broadband Planning K.K. and Willcom, Inc., and assigned spectrum to them.

E. Promotion of Trade in Telecommunications Equipment

1. <u>Mutual Recognition Agreement</u>:

   a. The Agreement on Mutual Recognition of Results of Conformity Assessment Procedures between Japan and the United States of America entered into force on January 1, 2008. The Governments of the United

States and Japan are making preparations towards implementing the agreement, including training in technical requirements, as soon as possible.

b. Under the arrangement for the acceptance of results of conformity assessment for information technology (IT) equipment and industrial, scientific and medical (ISM) equipment with respect to Electro-Magnetic Compatibility (EMC), 58 Japanese conformity assessment bodies (CABs) have been recognized by the Federal Communications Commission (FCC) and 19 U.S. CABs have been recognized by the Voluntary Control Council for Interference by Information Technology Equipment (VCCI) by the end of May 2008.

2. In October 2007, MIC amended regulations to provide for the registered certification body to be able to assign, at its own discretion, the same number for a new certification when making changes in the construction type for an addition of or a change of antennas for the radio equipment of radio stations of a low-power data communication system (wire-less LAN) based on an already certified construction type.

II. INFORMATION TECHNOLOGIES (IT)

A. IT and e-Commerce Policymaking

1. Developing IT Policy Plans: The Government of Japan will seek and consider a diverse range of opinions from the private sector when creating and implementing IT and e-Commerce policies. In July 2007, the IT Strategic Headquarters (ITSH) released a new IT Priority Policy Program that was published on the Cabinet Secretariat's website. The ITSH will continue to seek opinions from interested parties, including through an Expert Committee on IT Strategy Evaluation that includes private sector members, by employing public comment procedures. The ITSH will release a new Priority Policy Program in summer 2008.

2. Facilitating Private Sector Input: The ITSH will provide a public comment period for a draft of the Priority Policy Program. The Government of Japan will continue to provide meaningful opportunities for interested parties in the private sector to give input at early and subsequent stages in the formulation of IT and e-Commerce policies through public comment procedures and other means. The Government of Japan also will continue to provide opportunities for the private sector to obtain information promptly about, and participate actively in, the formation and work of IT and e-Commerce advisory and study groups.

3. Fostering Technology Neutrality: The Government of Japan will implement laws, regulations, and guidelines related to IT in a manner that promotes choice and competitive market conditions by ensuring that providers and users have the flexibility to choose technologies that best suit their needs. The Government of

continue to evaluate the impact of the most recent U.S. guidance, as well as Japan's recommendation, in light of the documentation and tax reporting requirements set forth in the regulations establishing the qualified intermediary regime.

XV. TELECOMMUNICATIONS

A. Competition in the Navigation Devices Market

1. The Government of the United States will continue a dialogue with the Government of Japan on how the Federal Communications Commission (FCC) enforces Section 629 of the Telecommunications Act with a view to ensuring choice in the market for navigation devices (set-top boxes). In June 2007, the FCC initiated a rulemaking to establish reasonable technical requirements to facilitate a competitive market for the supply of interactive navigation devices, and is currently evaluating proposals set forth in the public record. The cable industry and consumer electronics industry continue to negotiate the specific technical requirements for interactive devices; the FCC will continue to monitor those discussions and will adopt rules to ensure that a competitive market for navigation devices develops.

2. Implementation of DTV Converter Box Program: The National Telecommunications and Information Administration (NTIA) is successfully implementing its Converter Box Coupon Program, distributing over 13 million coupons as of May 2008, which consumers can use to purchase from among 85 competitively-supplied certified devices produced by a number of different manufacturers. NTIA welcomes and relies on the voluntary participation of digital-to-analog converter box manufacturers to ensure the success of the Coupon Program. Manufacturers wishing to participate in the program must submit a notice of intent to NTIA at least three months prior to submitting test results and sample models of converter boxes per the process outlined in the Final Rule, §301.5. NTIA's Final Rule adopts technical specifications and features to which manufacturers must adhere in order for a converter box to be eligible for the Coupon Program.

B. **Universal Service**: In January 2008, the FCC issued two Notices of Proposed Rulemakings seeking comment on ways to reform the high-cost universal service program, including rules governing the amount of high-cost universal service support provided to eligible telecommunications carriers (ETCs) and comment on whether and how to implement reverse auctions (a form of competitive bidding). In May 2008, the FCC issued rules capping high-cost payments at 2007 levels. This action was a crucial first step toward comprehensive reform of universal service and intercarrier compensation, enabling the FCC to move forward expeditiously on comprehensive reform of both universal service and intercarrier compensation.

C. Open Platform Requirements for Designated Licenses in the 700 MHz Auction and

Open Access to the Internet

1. The United States succeeded in winning significant endorsement of an open platform for mobile wireless devices by market participants in the 700 MHz auction, as evidenced by the record number of bids and revenues generated even with the aggressive build-out and open platform requirements for the "C Block." Following the FCC's decision to impose an open platform requirement on the C block, a major mobile carrier made a commitment to open its entire network to devices and applications of consumers' own choosing.

2. The FCC held two hearings (at Harvard University in Cambridge Massachusetts in February 2008 and Stanford University in Palo Alto, California, in April 2008) at which panels of experts rendered advice and opinions on broadband network management practices and Internet-related issues including with respect to operators' restrictions on the use of peer-to-peer technologies.

D. **Local Content Requirement for Federal Government Loans for Telecommunications Equipment**: The United States Trade Representative (USTR) has the authority to waive the application of buy national requirements imposed as conditions of funding by the Rural Utilities Service for telecommunications projects. This waiver authority may only be exercised where USTR determines that another country provides reciprocal access to U.S. products and services and U.S. suppliers. Recognizing the importance of this issue, the Government of the United States will continue a dialogue on this issue with the Government of Japan, and is also willing to consider such a waiver in the context of multilateral negotiations addressing reciprocal requests.

E. **Ensuring Prompt Procedures and Transparency for Export Licenses for Satellites**: As detailed in Section VII. A. (Export Licensing Procedures), on January 22, 2008, President Bush issued an Export Control Directive applicable, *inter alia* to satellites and satellite technology, that will improve the manner in which the U.S. Department of State licenses the export of technical data, and expedite the processing of export license applications for items controlled by the U.S. Munitions List. The Export Control Directive mandates commitment of more resources for adjudication and has already reduced average processing times and the backlog of pending applications. The Department of State will also upgrade the electronic licensing system and establish a more efficient dispute resolution mechanism.

F. **Development of Broadband in the United States**

1. On June 12, 2008, the FCC released its fifth report of deployment of advanced telecommunications capability (706 Report).

2. The report found that the number of high-speed lines with speeds of over 200 kbps in at least one direction – reached 100.9 million including 27.5 million of ADSL, 34.4 million of cable modem, 1.4 million of fiber and 35.3 million of mobile wireless in June 2007. As of June 2007, only 0.1 percent of zip codes in

the United States reported no high-speed lines, compared to 6.8 percent in December 2003.

G. Promotion of Trade in Telecommunications Equipment

1. The Agreement on Mutual Recognition of Results of Conformity Assessment Procedures between the United States of America and Japan entered into force on January 1, 2008. The Governments of the United States and Japan are making preparations towards implementing the Agreement, including training in technical requirements, as soon as possible.

2. Under the arrangement for the acceptance of results of conformity assessment for information technology (IT) equipment and industrial, scientific and medical (ISM) equipment with respect to Electro-Magnetic Compatibility (EMC), 58 Japanese conformity assessment bodies (CABs) have been recognized by the Federal Communications Commission (FCC) and 19 U.S. CABs have been recognized by the Voluntary Control Council for Interference by Information Technology Equipment (VCCI) by the end of May 2008.

XVI. INFORMATION TECHNOLOGIES (IT)

A. Protection of Copyright and Related Rights

1. The Governments of the United States and Japan agree on the importance of protection for and enforcement of copyrighted works.

2. The Government of the United States recognizes the importance of protection of live performances, unfixed works, and moral rights. The Government of the United States understands that the protection of these rights is important to the Government of Japan.

   a. *Protection of Live Performances*: The Government of the United States recognizes that TRIPS Article 14 and WPPT Article 6 provide for the protection for unfixed live performances. The Government of the United States will ensure transparency regarding the protection for unfixed live performances.

   b. *Protection of Rights of Unfixed Works*: The Government of the United States will ensure transparency regarding protection for unfixed copyrighted works under Federal and State law.

   c. *Protection of the Moral Rights of Authors and Performers:* The Government of the United States will ensure transparency regarding protection for moral rights under Federal and State law.