

**SECOND REPORT TO THE LEADERS ON THE
U.S.-JAPAN REGULATORY REFORM AND COMPETITION POLICY INITIATIVE
May 23, 2003**

Now in its second year, the Regulatory Reform and Competition Policy Initiative (Regulatory Reform Initiative) was established by President George W. Bush and Prime Minister Junichiro Koizumi in June 2001 to promote economic growth by focusing on sectoral and cross-sectoral issues related to regulatory reform and competition policy.

Consistent with the aim of achieving tangible progress and the principle of two-way dialogue, the Governments of the United States and Japan exchanged detailed regulatory reform recommendations in October 2002. These recommendations provided the basis for extensive discussions between the two Governments for meetings of the High-Level Officials Group and the Working Groups established under this Initiative. These Groups met throughout the year to discuss reforms in key sectors and areas, including telecommunications, information technologies, energy, medical devices and pharmaceuticals, competition policy, the Special Zones for Structural Reform (raised in this Initiative for the first time this year), transparency, legal system reform, commercial law revision, and distribution. As in the first year of this Initiative, several of the Working Groups invited input from private sector representatives, who provided their valuable expertise, observations, and recommendations on important issues taken up under this Initiative.

The Government of Japan has taken a series of regulatory reform measures over the past year, including the adoption in March 2003 of its re-revised three-year Regulatory Reform Promotion Program. In addition, the Government of the United States especially welcomes the establishment in Japan of the Headquarters for Promotion of Special Zones for Structural Reform and the launch of the first round of 57 Special Zones in April 2003. The Government of the United States also welcomes the opportunity to cooperate in helping to ensure the success of this innovative new approach to promoting growth through structural reform and deregulation at the local level. The Government of the United States looks forward to successful reform measures in the Special Zones being applied on a national basis expeditiously.

The salient regulatory reforms and other measures by both Governments that relate to the work under the Regulatory Reform Initiative are set out in this Report to the Leaders. (Financial services measures taken up in the Financial Dialogue are also included.) The two Governments welcome the measures specified in this Report and share the view that these measures will improve market access for competitive goods and services, enhance consumers' interests, increase efficiency, and promote economic activity.

Both Governments 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**

I. TELECOMMUNICATIONS

A. Promotion of Competition

1. The Government of Japan submitted to the Diet in March 2003 amendments to the Telecommunications Business Law (TBL), which are aimed at promoting further competition in the telecommunications business field. The amendments to the TBL, which maintains asymmetrical regulation for dominant carriers, include the following:
 - a. Abolition of the Type I (facility-based) and Type II (others) business categories and the permission system for new entrants;
 - b. Abolition of tariff regulations on non-dominant carriers, enabling individualized contract-based services; and
 - c. Abolition of the prior notification system concerning interconnection agreements for non-dominant carriers.
2. In February 2003, after inviting public comments for a month, the Ministry of Public Management, Home Affairs, Posts and Telecommunications (MPHPT) conditionally approved NTT East's and West's applications to provide interprefectural IP-based services. Beginning in FY2003, NTT East and West will be required to file with the Minister for Public Management, Home Affairs, Posts and Telecommunications and publish reports, on a regular basis, documenting their compliance with the parameters stipulated in the guidelines for expanding the range of their businesses.
3. In order to strengthen the environment for the usage of DSL services, the Telecommunications Council's Study Group on Technology has been conducting a study regarding basic conditions for spectrum management, so that the spectrum compatibility of specifications applied to a future system, including existing specifications not yet identified, can be measured expeditiously. The draft Council report, which is open for public comments until June 2, 2003, proposes that its recommendations be reflected in the Telecommunication Technology Committee's establishment of spectrum management standards. The standards will provide an objective basis for applying NTT East's and West's interconnection tariffs.

B. **Telecommunications Business Dispute Settlement Commission:** MPHPT confirms the importance of obtaining adequate dispute settlement capabilities, funding and personnel for the Telecommunications Business Dispute Settlement Commission.

C. **Fixed Interconnection**

1. In February 2003, MPHPT consulted the Telecommunications Council about amendments to the ministerial ordinance for interconnection rates. The Council issued its report in March after holding a public hearing with relevant parties and inviting public comments. Based on the report, MPHPT revised the ministerial ordinance for interconnection rates in April.
2. In April, the Minister for Public Management, Home Affairs, Posts and Telecommunications approved the revision of interconnection tariffs NTT East and West submitted based on the revised ministerial ordinance. The new rates are in effect for two years. MPHPT will conduct a study on interconnection rates to be applicable on completion of the period, considering fundamental environmental changes, such as declining traffic volume and new investment.
3. This study will include such issues as how to recover non traffic sensitive (NTS) costs (including the scope of costs to be recovered by basic monthly user fees) and the relationship of interconnection rates to the universal service fund mechanism. In addition, the Council recommended that input data other than traffic volume, such as the unit price of equipment, also be revised when changes in traffic necessitate the recalculation of interconnection rates.
4. The Government of Japan will continue a dialogue with the Government of the United States on interconnection-related issues.

D. **Mobile Communications**

1. In order to resolve a dispute relating to the setting of user rates of fixed-to-mobile calls, a fixed network operator applied to MPHPT for arbitration under Clause 3 of Article 39 of the TBL. The Minister for Public Management, Home Affairs, Posts and Telecommunications made a decision in November 2002, after receiving a report from the Telecommunications Business Dispute Settlement Commission, that this operator should set user rates for calls to mobile networks from consumers directly linked to this operator.
2. A study group established by MPHPT is examining the setting of user rates of calls originating from NTT East and West and terminating on mobile networks via inter-exchange carriers and those originating from IP phones and terminating on mobile networks from the viewpoint of promoting competition and user benefits. Public comments have been invited on the study group's draft report released on April 25, 2003.

3. NTT DoCoMo's interconnection rates have been significantly reduced over the last several years. The rates filed in March 2003 resulted in a reduction of approximately 5 percent compared to the previous fiscal year. Telecommunications carriers with Category II-designated telecommunications facilities (mobile networks) continue to be required to notify MPHPT of and publicize interconnection tariffs.

E. Promotion of Advanced Technologies and Services

1. In February 2003, the Working Group held a panel discussion with experts from government and the private sector in order to hear their views on trends and issues in the developing IP telephony market.
2. The Governments of Japan and the United States will exchange views within FY2003 on the relevance of the 1990 exchange of letters on Network Channel Terminating Equipment (NCTE) in light of ongoing developments in the market, with a view toward ensuring that its provisions do not hinder the rapid deployment of advanced technologies, while maintaining the principle of the openness of network interfaces for dominant carriers.
3. The Governments of Japan and the United States will continue to exchange information on the development of advanced technologies, including wireless Local Access Networks (WLANs), and their potential role in the market.

II. INFORMATION TECHNOLOGIES

A. Removing Regulatory and Non-Regulatory Barriers

1. Legal Framework: The Government of Japan has continued to remove remaining barriers that hindered e-commerce such as amending the Commercial Code to allow the use of the Internet to send invitations for shareholders' meetings and for other purposes, implementing a "No-Action-Letter" system, and establishing new rules for e-commerce such as the "Law Prescribing Exceptions to the Civil Code Related to Electronic Contracts." The Government of Japan will ensure that each Ministry will continue to revise existing regulations that hinder e-commerce and establish rules as necessary to further promote free and diverse e-commerce activities.
2. Alternative Dispute Resolution Framework: The Governments of Japan and the United States recognize that establishing a framework that allows for fair and effective alternative dispute resolution (ADR) for online dispute settlement is important to the development of e-commerce. The Government of Japan is studying necessary measures for establishing a comprehensive institutional base for ADR, which would include allowing qualified non-lawyers to provide ADR services for profit for online dispute settlement. The study will consider allowing

provide Japan with updated information on the result of such efforts as appropriate. The BCIS notes that it has standardized procedures for processing Form I-539 across all the centers. That was a positive step towards BCIS's effort of streamlining and standardizing the adjudicative process for change of status and extension of stay applications.

- G. **Facilitation of the Resolution of Disputes in the Construction Business:** The Government of the United States took note of the view expressed by the Government of Japan that dispute resolution for some U.S. public works projects may be time-consuming for the companies involved and that dispute resolution should be facilitated. Disputes related to U.S. federal public works projects can be resolved fairly and expeditiously through the Alternative Dispute Resolution (ADR) mechanism as stipulated in the Federal Acquisition Regulations (Section 33). The Government of the United States will continue to exchange information with the Government of Japan on this issue, including developments at state and local levels.

II. TELECOMMUNICATIONS

- A. **Participation in the U.S. Wireless Market:** The Government of the United States will continue a dialogue with the Government of Japan on restrictions on direct investment in the U.S. wireless market. Taking account of Japan's concern in this area, the Government of the United States clarifies that U.S. law does not prohibit private foreign entities from holding up to 100 percent direct or indirect investment in non-broadcast, non-common-carrier or non-aeronautical en route or non-aeronautical fixed radio station licenses. In addition, such entities may directly own up to 20 percent and may indirectly own up to 25 percent in broadcast, common carrier and aeronautical en route or aeronautical fixed radio station licenses without special Federal Communications Commission (FCC) approval; up to 100 percent indirect ownership is also possible in principle, if it is found that this would be in the public interest. With respect to indirect investment relating to common carriers, the FCC makes a rebuttable presumption in favor of entry if the foreign investor is from a WTO member country. Under the above framework, many foreign companies have entered the U.S. market. The Government of the United States will continue to provide information to the Government of Japan on the classification between common carriers and non-common-carriers in the United States.
- B. **Certification and Licensing Criteria for Foreign Carriers' Entry into the U.S. Telecommunications Market**
1. The Government of the United States will continue a dialogue with the Government of Japan on issues relating to the transparency of U.S. certification and licensing criteria, and the application of foreign policy, trade policy, and competition concerns to licensing decisions.
 2. A review of regulations relating to international services is underway as a part of the 2002 Biennial Review. In March 2003, the FCC issued its Biennial

Regulatory Review Report for year 2002. The Commission also concurrently released the 2002 Biennial Regulatory Review Staff Reports (Staff Reports). The Telecommunications Act of 1996 requires the Commission to review the rules issued under the Communications Act that apply to telecommunications service providers to determine whether any regulations are no longer necessary in the public interest due to meaningful economic competition and whether such regulations should be repealed or modified. The Commission's 2002 Biennial Regulatory Review Report and the accompanying Staff Reports fulfill its statutory responsibility and identify current rules that should be modified or repealed.

3. The Commission will decide whether to act on staff recommendations by issuing Notices of Proposed Rulemaking as appropriate to effectuate the recommendations in the Staff Reports. Any Notice of Proposed Rulemaking would invite comments from interested parties, including from the Government of Japan. The Government of the United States acknowledges Japan's interest in clarification of procedures regarding Section 310 (b) (4) of the Communications Act and current reporting requirements on carriers regarding traffic and revenue data, issues also identified in FCC Staff Reports. The statements from Chairman Powell and the Commissioners, as well as the Staff Reports, including the International Bureau's report, are all available at <http://www.fcc.gov/biennial>.

C. State-Level Regulations

1. The Government of the United States will continue a dialogue with the Government of Japan regarding state-level regulation, including licensing procedures and the Government of Japan's interest in regulatory harmonization among states. Taking account of Japan's concern in this area, the Government of the United States notes that all carriers – domestic as well as foreign – are required to file forms unique to each state in which they operate. The Government of the United States welcomes efforts by Japan and other countries to work with the National Association of Regulatory Utility Commissioners (NARUC) on items relating to state-level regulation, and has communicated to NARUC Japan's interests.
2. The FCC continues to consider whether to adopt harmonized nationwide reporting requirements (known as performance standards) it proposed regarding aspects of incumbent local exchange carrier compliance with the Telecommunications Act of 1996.

D. Access Charges and Interconnection

1. In the *Notice of Proposed Rulemaking, Developing a Unified Intercarrier Compensation Regime* (NPRM), the FCC begins a fundamental re-examination of all currently regulated forms of intercarrier compensation. The FCC will test the

concept of a unified regime for the flows of payments among telecommunications carriers that result from the interconnection of telecommunications networks under current systems of regulation. Specifically, the NPRM seeks comment on the feasibility of a bill-and-keep approach for such a unified regime, as well as modifications to existing intercarrier compensation regimes. In sum, the FCC seeks to move forward from the transitional intercarrier compensation regimes to a more permanent regime that consummates the pro-competitive vision of the Telecommunications Act of 1996.

2. Upon the release by the FCC of the Triennial Review order adopted February 2003 (FCC 03-36), the Government of the United States will continue a dialogue with the Government of Japan to further clarify TELRIC pricing rules and other issues.

E. Procedures for Processing Export Licenses and TAA Approval of Commercial Satellites

1. The Government of the United States recognizes the Government of Japan's concerns regarding the processing period for export licenses and Technical Assistance Agreement (TAA) approval of commercial communications satellites.
2. The Government of the United States has taken the following measures to improve policies and procedures for export licensing and TAA approval for commercial communications satellites:
 - a. The Department of State's Directorate of Defense Trade Controls, which licenses defense trade, underwent a significant reorganization in January 2003 with the goal of improving export licensing policies and procedures;
 - b. In addition, the Directorate is developing an electronic "paperless" licensing system. This will facilitate applications and accelerate processing times; and
 - c. Effective September 2002, the dollar value of export licenses, including those for commercial communications satellites, above which congressional notification is required has been raised from \$50 million to \$100 million when the exports are to U.S. allies, including Japan. As a result, the range of satellites which do not require congressional notification has been expanded.
3. The Government of the United States will continue its efforts to minimize delays in export licensing and TAA approval for commercial communications satellites in accordance with U.S. law while safeguarding national security.

F. Promotion of Advanced Technologies and Services

1. In February 2003, the Working Group held a panel discussion with experts from government and the private sector in order to hear their views on trends and issues in the developing IP telephony market.
2. The Governments of Japan and the United States will exchange views within FY2003 on the relevance of the 1990 Exchange of Letters on Network Channel Terminating Equipment (NCTE) in light of ongoing developments in the market, with a view toward ensuring that its provisions do not hinder the rapid deployment of advanced technologies, while maintaining the principle of the openness of network interfaces for dominant carriers.
3. The Governments of Japan and the United States will continue to exchange information on the development of advanced technologies, including wireless Local Access Networks (WLANs), and their potential role in the market.

III. INFORMATION TECHNOLOGY

A. Copyright Protection

1. The Government of the United States recognizes the importance of ensuring the protection of the right of making available, rights concerning live performances and moral rights. In response to the Government of Japan's requests for clarification about several aspects of United States Copyright Law with regard to these rights, our two Governments have had a series of productive discussions among copyright experts. The Government of the United States provided extensive information on the statutory and case law basis for the protection of the right of making available, as well as information on the protection of live performances, moral rights and unfixed works under the U.S. legal system. The Government of the United States and the Government of Japan will continue the discussion on these issues.
2. The Government of the United States and the Government of Japan will continue the discussions on the protection of the right of rental for computer programs with special emphasis on video game programs.
3. The Government of the United States and the Government of Japan recognize the importance of ensuring the protection of the rights of broadcasting organizations. To that end, the two Governments will continue to work on a new treaty in this area in the World Intellectual Property Organization (WIPO). The Government of the United States has submitted a comprehensive new proposal for a treaty, which gives protection for broadcasting, cablecasting and webcasting organizations, to be considered at the next meeting of the WIPO Standing Committee on Copyright and Related Rights in June of this year.