

**THIRD REPORT TO THE LEADERS ON THE  
U.S.-JAPAN REGULATORY REFORM AND COMPETITION POLICY INITIATIVE  
June 8, 2004**

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. Now in its third year, the Initiative is intended 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 2003. 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 such as telecommunications, information technologies, energy, medical devices and pharmaceuticals, competition policy, transparency and other government practices (including Special Zones for Structural Reform), legal system reform, commercial law revision, distribution, consular affairs, and trade and investment-related measures. As in previous years of this Initiative, several of the Working Groups received input from private sector representatives, who made presentations and 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 by Cabinet Decision on March 19, 2004 of its new Three-Year Program for the Promotion of Regulatory Reform. The Government of the United States welcomes this decision and the establishment of the Council for the Promotion of Regulatory Reform in April 2004 as the successor of the Council for Regulatory Reform, which over the years has worked to effectively improve the regulatory environment in Japan. The Government of the United States also continues to welcome the opportunity to cooperate with the Headquarters for Promotion of Special Zones for Structural Reform in helping to ensure the success of the Special Zones program and 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.

Seeking to ensure this Initiative remains forward-leaning, both Governments affirm a desire to place greater focus in the coming year on areas that have assumed increased relevance to the broader economic reform agenda. This may include placing more emphasis on issues related to competition policy and privatization, which are already being taken up under this Initiative to varying degrees. In addition, the two Governments affirm their desire to consider taking up new areas where reform would further the objectives of this important Initiative.

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 has formulated a competition policy in the telecommunications field in line with rapid advances of technology, and has thereby facilitated the development of a telecommunications market where broadband services, affordability, and speeds are among the most advanced in the world.
2. The amended Telecommunications Business Law (TBL) came into effect on April 1, 2004, aiming at promoting further competition in the telecommunications business. The amended TBL introduces a variety of fundamental deregulatory measures, which are expected to realize a more competitive telecommunications market including the following:
  - a. Abolition of the Type I (facility-based) and Type II (others) business categories as well as the permission system for new entrants;
  - b. Abolition of obligations to file and publicize tariffs, enabling individualized contract-based services; and
  - c. Abolition of the obligation to notify agreements regarding interconnections with non-designated facilities.
3. The Government of Japan revised the relevant ministerial ordinances to bring the TBL into effect after consultation with the Telecommunication Council and solicitation of public comments for five weeks. The Ministry of Public Management, Home Affairs, Posts and Telecommunications (MPHPT) incorporated some of the opinions received through the public comment process into the revised ordinances as appropriate and articulated its views on all the comments solicited therein.
4. MPHPT is conducting a competition evaluation of the telecommunications market, beginning in FY2003, in order to evaluate the status of competition in the telecommunications market, which is becoming increasingly complex as a result of the rapid evolution of Internet Protocol (IP) and broadband technologies and services. In November 2003, MPHPT drafted the “Basic Approach Concerning the Evaluation of the Competitive Situation in the Telecommunication Business Field,” which outlined the process of this evaluation. Under the “Basic Approach,” MPHPT plans to choose a specific market sector and evaluate its

competitive situation every fiscal year, after conducting public comment procedures. With regard to FY2003, MPHPT chose “Internet access” as the scope of evaluation, and on April 27, 2004 released a draft of the evaluation results for public comment.

**B. Fixed Interconnection**

1. Revised charges, based on actual traffic data and revised inputs, retroactive to April 2003 will be set by fall 2004.
2. A report issued by the Telecommunication Council in March 2003 concluded that the method of calculating interconnection rates to be applied from FY2005 should be based on major changes in the market environment, including a reduction in the volume of traffic and a slowdown in new investment. Based on the report, in April 2004, a study group on the Long-run Incremental Cost Model, reestablished by MPHPT, outlined the process to be used to revise the current model after soliciting public comments for a month.
3. In April 2004, MPHPT consulted the Telecommunication Council on drafting a report on how to calculate the interconnection rates to be applied from fiscal year 2005, taking into consideration the evaluation of the new model based on factors mentioned above, and how to treat the non-traffic sensitive (NTS) cost based on the review of NTT East and West’s basic monthly charge. In addition, the Telecommunications Council will discuss whether it is appropriate to calculate and set charges separately for NTT East and West.
4. MPHPT expects the Telecommunications Council to release its final report in the fall of 2004, after conducting a public comment procedure.

**C. Mobile Communications**

1. A study group established by MPHPT examined the setting of user rates of calls originating from NTT East and West and terminating on mobile networks via inter-exchange carriers. The study group completed its report in June 2003 after soliciting public comments for a month. After evaluating the report, MPHPT issued the “Policy for Setting User Rates of Calls Originating from NTT East and West and Terminating on Mobile Networks Via Inter-Exchange Carriers,” and carriers other than mobile network operators have been able to set user rates since April 2004. As a result, rate reductions of up to 55 percent were realized for calls originating from NTT East and West and terminating on mobile networks.
2. NTT DoCoMo’s interconnection rates have been significantly reduced over the last three years by approximately 22 percent, to among the lowest levels in developed countries with a calling-party-pays system. The rates filed in March 2004 resulted in a reduction of approximately 4 percent compared with rates filed

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.

**D. Promotion of Advanced Technologies and Services:**

1. In November 2003 and March 2004, the Telecommunications Working Group of the Regulatory Reform Initiative obtained information from private sector experts on the utilization and application of radio frequency identification (RFID) in both countries. The Working Group heard their views on current trends and issues in the developing RFID market, including technology, market status, and policy.
2. In March 2004, MPHPT solicited public comment on the “Draft Final Report of the Study Group on Advanced RFID (Electronic Tag) Application in the Ubiquitous Networking Age.” Based on the report, MPHPT will continue to promote testing of both passive and active tag technology in the UHF band. Based on such testing, the Telecommunications Council will discuss technical conditions and the Radio Regulatory Council will discuss regulations.

**E. Network Channel Terminating Equipment (NCTE):**

1. The Governments of Japan and the United States, having exchanged views on the relevance of the 1990 Exchange of Letters on Network Channel Terminating Equipment (NCTE) (“the 1990 Letters”), share the following recognition, based upon which the two Governments propose a process for terminating the procedures established through this exchange of letters:
  - a. Significant competition among telecommunications carriers has emerged and the development process of terminal equipment has changed substantially.
  - b. Because of the shortened life-cycle of products, the shortened lead-time of product development, and the increased use of standards, timeframes described in the 1990 Letters for the disclosure of information on specifications for NCTE before the introduction of individual services may hinder prompt supply of advanced services.
2. As a transitional measure, the procedures established through the 1990 Letters will be streamlined as indicated below. Unless sufficient evidence demonstrating the continued need for these revised procedures is introduced, following solicitation of opinions from interested parties, these procedures will cease to be applied beginning in FY2006.
  - a. Scope of carriers subject to revised procedures: Main carriers that determine specifications of NCTE and provide services (except those of

sufficiently competitive areas), using Category I designated telecommunications facilities.

- b. Scope of information disclosure under revised procedures: Regarding NCTE where network interface information has been made generally available through a standardization process or by other means, disclosure will not be required.
- c. Term of disclosure of technical specifications: In principle, three months minimum, prior to introduction of a new service.

## II. INFORMATION TECHNOLOGIES

### A. Removing Regulatory and Non-Regulatory Barriers

1. Legal Framework: The Government of Japan has removed various barriers to e-commerce, electronic notifications, and transactions by introducing new rules and updating existing ones, such as the amendment of the Commercial Code and introduction of the “No-Action Letter” system. The Expert Committee on IT Strategy Evaluation (Expert Committee) under the IT Strategic Headquarters indicated in its March 2004 e-Japan Evaluation report that while IT-related regulations have been considerably improved through regulatory reforms, continuous efforts to advance regulatory reform are critical to improve the efficiency of the overall social system through IT utilization. The Expert Committee will study the causes of the slow pace of regulatory reform in some sectors and propose necessary measures to address them. More broadly, the Government of Japan will ensure that each Ministry and Agency will continue to revise existing regulations that hinder e-commerce and establish rules as necessary to further promote free and diverse e-commerce activities, and do so in a manner that promotes technology neutrality.
2. Private Sector Leadership: Under the “e-Japan Strategy II” principle that “the private sector plays a leading role with government support,” the “e-Japan Priority Policy Program 2003” articulates the necessity of facilitating smooth market operations, such as promoting free and fair competition and creating an environment where the private sector can maximize its leadership potential. Based on these perspectives, the Government of Japan will continue to promote the effective use of IT without unnecessary regulation and by removing impediments to the development of e-commerce. In addition, as the Government of Japan develops its e-commerce policies under the “e-Japan Priority Policy Program 2004,” it will promote the principle of private sector self-regulation to the extent possible.
3. Special Zones: The Government of Japan has so far approved four IT Special Zones for Structural Reform and will seriously consider applying successful

experiencing related to public works procurement, and will take additional steps as appropriate.

## **II. TELECOMMUNICATIONS**

### **A. Participation in the U.S. Wireless Market**

1. The Government of the United States acknowledges the Government of Japan's interest in the restrictions on the ratio of foreign direct investment in the U.S. wireless market, and will continue a dialogue with the Government of Japan on this issue.
2. 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, several 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, based on consultations involving relevant agencies, 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 2004 Biennial Review. The Telecommunications Act of 1996 requires the FCC 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 comment

period for the 2004 is now open, and the Government of the United States welcomes Japan to enter its recommendations on the record.

3. The FCC 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.
4. The Government of the United States acknowledges Japan's interest in clarification of procedures regarding Section 214 and Section 310 (b) (4) of the Communications Act and current reporting requirements on carriers regarding traffic and revenue data.

#### **C. State-Level Regulations**

1. The Government of the United States will continue a dialogue with the Government of Japan regarding state-level regulations, including licensing procedures, the Government of Japan's interest in regulatory harmonization among states, and adoption of unified reporting requirements.
2. Taking account of concerns raised by the Government of Japan 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 the Governments of Japan and other countries to work with the National Association of Regulatory Utility Commissioners (NARUC) on items relating to state-level regulations, and has communicated to NARUC Japan's interests. The Government of the United States will provide the Government of Japan with information on NARUC's work.
3. The FCC's newly established the Office of Intergovernmental Affairs will foster a better understanding of FCC programs, policies, rules and decisions, facilitate a two-way exchange of information and communications on telecommunications issues between FCC, state, local, and other federal agencies, and promote cooperation and coordination in areas of overlapping jurisdiction.

#### **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, taking into account

the CALLS Agreement, which is in force until superceded by new rules. 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. The Government of the United States will continue a dialogue with the Government of Japan to further clarify rules for TELRIC pricing, UNEs, and other related issues, based upon the final decision to be made by the court concerning the Triennial Review as well as with a view to promoting competition and investment.

E. **Procedures for Processing Export Licenses and TAA Approval of Commercial Satellites:** In 1998 the United States Congress directed the United States Government to treat all satellite exports as munitions exports, subject to munitions licensing procedures, including case-by-case review. The Directorate of Defense Trade Controls of the Department of State considers each application for the export of a satellite, satellite components, or technical data on its merits, including whether or not security considerations will allow the release of technical data. Detailed information about the Arms Export Control Act and ITAR (International Traffic in Arms Regulations), including information on the licensing process, is also available on the web at <<http://pmdtc.org/reference.htm>>.

1. The electronic licensing system has been active since January 15, 2004, and was formally inaugurated by Secretary Powell on February 18, 2004. Additional information is available on the web at <http://www.pmdtc.org>. This system will make the licensing process more streamlined and efficient. The Governments of the United States will respond to the extent possible to requests for information from the Government of Japan regarding improvements resulting from this new system.
2. The Government of the United States will continue its efforts to minimize delays and maximize transparency of procedures in export licensing and TAA approval for commercial communications satellites in accordance with U.S. laws, regulations, and policies. The United States Government and the Government of Japan have conducted an informative dialogue on export licensing for commercial satellites. Recognizing the importance of U.S.-Japan relations, the Department of State is prepared to discuss specific cases with the Government of Japan if necessary.

F. **Promotion of Advanced Technologies and Services:** In November 2003 and March 2004, the Telecommunications Working Group of the Regulatory Reform Initiative obtained information from private sector experts on the utilization and application of radio frequency identification (RFID) in both countries. The Working Group heard their views on current trends and issues in the developing RFID market, including technology, market status, and policy.

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## **III. INFORMATION TECHNOLOGY**

### **A. Protection of Intellectual Property Rights**

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, and the Government of the United States also recognizes the importance the Government of Japan places on the protection of unfixed works.