

Annual Reform Recommendations from the  
Government of the United States to the Government of Japan under the  
U.S.-Japan Regulatory Reform and Competition Policy Initiative

December 5, 2006

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The Regulatory Reform and Competition Policy Initiative (Regulatory Reform Initiative) was launched in 2001 under the U.S.-Japan Economic Partnership for Growth to promote economic growth and open markets through sectoral and cross-sectoral reforms. The Initiative, now in its sixth year, continues to play a major role in deepening bilateral trade and economic relations.

The United States welcomes Prime Minister Abe's commitment to press forward with economic reform in Japan. Reforms that create new opportunities, stimulate competition, and foster a stronger business climate will help maintain Japan's economic growth and vitality for years to come. The United States has also been encouraged by the efforts of other reform advocates within Japan, and is hopeful these activities will intensify in the coming months and years.

This year's recommendations from the United States emphasize the importance of making continuing progress on reform in the broad areas of telecommunications, information technologies, medical devices and pharmaceuticals, financial services, competition policy, commercial law and legal services, transparency, privatization of government corporations, distribution, and agriculture.

The Regulatory Reform Initiative is also an important forum enabling the United States and Japan to intensify our cooperation in pursuit of mutual interests through promoting high standards internationally, including in areas such as intellectual property protection and transparency in regulatory practices. The United States wishes to strengthen our work under the Initiative in these and other areas.

These recommendations, in addition to recommendations from Japan, serve as the basis for discussions over the coming months in the High-Level Officials Group and in four different Working Groups covering telecommunications, information technologies, medical devices and pharmaceuticals, and cross-sectoral issues. Progress achieved by each Government under the Initiative is then presented to the President and Prime Minister in the Initiative's annual Report to the Leaders.

The periodic participation of private sector representatives in this Initiative has also greatly informed our work through their expertise, and the United States looks forward to increasing the frequency of this practice.

The Government of the United States also looks forward to constructive discussions on these recommendations and welcomes receiving the Government of Japan's recommendations under this Initiative.

## TELECOMMUNICATIONS

The United States continues to monitor Japan's regulatory reform efforts for its telecom sector in response to evolving technologies. The United States believes that increased competition would foster innovation and offer Japanese consumers greater choice at lower prices. In this regard, the Government of Japan's decision to delay until 2010 an important discussion on the reorganization of the dominant carrier Nippon Telegraph and Telephone (NTT) was disappointing. Nevertheless, the United States urges Japan to continue taking steps to ensure a competitive environment for new entrants, competitive carriers, and equipment manufacturers.

### *RECOMMENDATION HIGHLIGHTS*

#### **Ensuring Market-Based Technology Decisions:**

Improve transparency and increase stakeholder participation in policymaking and regulations; promote efficient use of spectrum to increase opportunities for new services and technologies; foster a technology-neutral licensing regime where service providers can introduce innovative technologies.

**Strengthening Competitive Safeguards on Dominant Carriers:** Prevent anticompetitive behavior by carriers with market dominance as telecom services move to IP-based networks;

ensure a competitive playing field for both wireline and mobile interconnection; promote facilities-based competition across different broadband platforms; ensure that the universal service program is administered in a competitively-neutral manner.

#### **Promoting Trade in Telecommunications**

**Equipment:** Make the Suppliers' Declaration of Conformity (SDOC) process an efficient and attractive alternative to third-party certification; adopt a "family approval" approach for radio type approval procedures.

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## INFORMATION TECHNOLOGIES

The Government of Japan has completed several major plans for IT-related policies in 2006, including the New IT Reform Strategy, Priority Policy Program 2006, and e-Government Promotion Plan. In addition, it is undertaking an extensive review of its Copyright Law and steps to achieve goals contained in the Intellectual Property Strategic Program 2006. This year's recommendations support Japan's continuing efforts to enhance protection for IPR regionally and globally, strengthen bonds between our IPR regimes, foster the development of private-sector and government IT infrastructures, and promote use of IT and e-commerce in Japan.

### *RECOMMENDATION HIGHLIGHTS*

**IT and e-Commerce Policymaking:** Foster private sector participation and transparency in policymaking; promote technology neutrality and compatibility with international practices.

**IPR and Copyright Protection:** Strengthen protection, including through adoption of a statutory damages system and increased term of protection for sound recordings and other works.

**IPR Cooperation:** Promote strong standards for IPR protection and enforcement worldwide, especially in the Asia-Pacific, through enhanced cooperation in various fora; promote information exchange on trademarks and streamline patent procedures.

**Online Security:** Ensure comprehensive and transparent review of Privacy Act implementation, and that any revisions enhance business environment and do not restrict trans-border data flows; work closely with private sector on online fraud issues and continue collaboration with the United States.

**Health IT and e-Accessibility:** Provide opportunities for a wide range of vendors to participate in government health IT projects; exchange views on e-accessibility issues.

**Government IT Procurement:** Clearly define and appropriately limit liability in IT procurement contracts; allow contractors to possess ownership rights to IP created in government IT system development; reduce use of sole source contracting.

## TELECOMMUNICATIONS

- I. Ensuring Market-based Technology Decisions.** Consumer choice in Japan's telecom market is unnecessarily limited by the regulatory environment. The Ministry of Internal Affairs and Communications (MIC) continues to act as regulator and policy promoter for this sector, fueling a perception that its decisions provide disproportionate benefits to larger companies with historical ties to the Government. The United States believes that Japan needs to move regulatory functions to a fully independent governmental organization and encourages Japan to review the need for requirements that the Government of Japan own a specified amount of NTT shares. In addition to these fundamental reforms, Japan can take immediate steps to improve transparency, promote efficient use of spectrum, and institute technology-neutral principles.
- A. To foster greater transparency in policymaking and revision of telecom regulations, the United States urges Japan to:
1. Open the selection process for Government-sponsored study groups, whereby interested stakeholders (foreign or domestic) can participate;
  2. Require Government-sponsored study groups charged with making recommendations relating to regulation (including setting any mandatory technical requirements or recommendations on spectrum allocation) to make available in a timely and accessible manner the minutes and relevant documents of each meeting;
  3. Develop procedures to enable any interested party to formally petition MIC for the development, adoption, change, or deletion of rules, and for MIC to act on a petition without requiring study group involvement.
  4. With respect to private sector-led efforts to develop standards for areas such as digital home networks or services for next-generation networks (NGNs), refrain from interfering in, seeking to influence, or coordinating such efforts, apart from ensuring that:
    - a. any such standardization activities are open to full participation by any interested company, foreign and domestic; and
    - b. any standardization effort that identifies specific bands for exclusive use of spectrum is subject to full and open notice and comment process if and when such proposals are taken up by MIC;
  5. With respect to NGNs:
    - a. Ensure any network requirements established by NTT involving interfaces necessary for interconnection with the NTT East or West networks are developed in an open and transparent fashion, with all interested parties able to fully participate in the process (i.e., not

discriminating against companies which have not been selected to participate in NTT-sponsored co-development programs);

- b. Ensure that any new design NTT East or West seeks to implement in deploying NGNs minimizes proprietary solutions that require interconnecting companies to invest in supplemental equipment, such as the proprietary “Module C” originally required for interconnecting with NTT’s circuit-switched network; and
- c. Ensure that NTT East and West give adequate advanced notice of proposed network changes, to allow competing carriers ample time to introduce any necessary modifications into their own network.

B. To promote efficient use of spectrum and thus increase opportunities for new services and technologies, the United States urges Japan to:

- 1. Institute a clear policy of technology-neutral licensing, separating, to the maximum extent possible, operator choice of technology from the spectrum assignment and service license process.
- 2. With regard to access to spectrum:
  - a. Analyze incumbents’ unused spectrum, determine criteria to identify “warehousing” (hoarding), and take steps to eliminate it;
  - b. Publish draft plans for making additional spectrum available for innovative wireless technologies (including LANs, MANs) on an unlicensed consumer usage or “license-exempt” basis, including in the 5 GHz band; and
  - c. Institute a notice and comment process with a view to ensuring that licensed users of wireless broadband technologies have access to spectrum in a way that promotes multiple new entrants who are accorded maximum flexibility in their choice of technology.
- 3. With regard to competition in the wireless sector:
  - a. Review whether there are any unreasonable impediments to access to towers and tower sites for new entrants;
  - b. Create clear guidelines for licensed operators to lease, sub-lease, and exchange spectrum with other service providers (including MVNOs); and
  - c. Ensure that new entrants are able to avail themselves of reasonable procedures to facilitate roaming onto incumbent networks, until the new entrants are able to build out their own networks.

- C. To foster an environment where service providers can introduce innovative technologies, the United States urges Japan to:
1. Implement the universal service fund program in a technology-neutral manner by expanding the scope of eligible operators to include other technologies capable of delivering voice services (e.g., wireless);
  2. Allow the introduction of technological solutions that reduce harmful interference and make shared use of spectrum possible, such as for Broadband Over Powerline (BPL), on both an indoor and outdoor basis;
  3. Initiate procedures to permit broader use of software-defined radios; and
  4. Ensure the least burdensome regulation and technical requirements on emerging IP-based products and services and maintain flexibility for new business models for related services.

**II. Strengthening Competitive Safeguards on Dominant Carriers.** In September 2006, MIC published its “New Competition Promotion Program 2010” to address competition concerns as telecom services migrate to IP-based networks. The United States urges Japan to continue strengthening competitive safeguards on dominant carriers in this evolving market to ensure a competitive environment for new market entrants, competitive carriers, and equipment manufacturers.

- A. Competition Policy. As regulations are developed to implement the New Competition Promotion Program 2010, the United States urges Japan to:
1. Ensure that carriers implementing Fixed-Mobile Convergence (mobile devices that “roam” onto a fixed network) do not abuse any dominance in either the fixed or mobile sector through their affiliates;
  2. Ensure that dominant carriers implementing Fiber to the Curb (FTTC) or Fiber to the Home (FTTH) do not preclude competition by unreasonably eliminating copper-based access to customers;
  3. Review licensing requirements for international Internet-based voice services and applications to distinguish between voice applications that fully substitute for traditional phone service and those that do not; and
  4. Promote facilities-based competition among different broadband platforms, aiming to encourage network operators to invest in and build competing IP-based infrastructure and minimize regulatory disincentives.
- B. Wireline Interconnection. Keeping in mind that the current LRIC model will expire in 2008, and to ensure a competitive playing field under changing market conditions, the United States urges Japan to:

1. Require NTT East and West to each set a cost-oriented interconnection rate, consistent with Japan's WTO obligations, taking into account differing costs of the respective regions; and, as necessary, permit differential interconnection rates between the regional carriers, taking into account dangers of (and ways to prevent) anti-competitive price squeezes;
  2. Eliminate the use of interconnection revenue as a source of cross-subsidization between NTT East and West; and
  3. Consider permitting interconnection (connecting with either dry copper or line-shared frequencies) at remote terminals.
- C. Mobile Interconnection. For calls terminating on mobile networks, the United States urges Japan to:
1. Institute an objective and transparent means for evaluating whether mobile wireless termination rates are set at levels that reflect the principle of cost-orientation under efficient management, consistent with Japanese law;
  2. Provide transparent means for resolving mobile interconnection issues, utilizing objective criteria as a clear basis for arbitration if commercial negotiations fail; and
  3. Analyze NTT DoCoMo's dominant position in the mobile sector, and the degree to which any existing mobile carriers exert market power in the sub market for call termination.

**III. Promoting Trade in Telecommunications Equipment.** With a view towards removing burdensome requirements that do not reflect the technological realities of the global marketplace, the United States recommends that Japan take steps to streamline its certification process for telecom equipment, to benefit both domestic and foreign equipment makers.

- A. Suppliers' Declaration of Conformity (SDOC). To make the SDOC process an efficient and attractive alternative to third-party certification, the United States urges Japan to:
1. Seek industry feedback in a transparent manner on possible reforms; and
  2. Take concrete steps to simplify and improve the process.
- B. Type Approval. The United States urges Japan to adopt a "family approval" approach for radio type approval procedures that allows modifications to radio equipment certifications without requiring a new type approval registration.