

**SIXTH REPORT TO THE LEADERS ON THE  
U.S.-JAPAN REGULATORY REFORM AND COMPETITION POLICY INITIATIVE  
June 6, 2007**

The U.S.-Japan Regulatory Reform and Competition Policy Initiative, launched in June 2001, is now completing its sixth year. The Initiative was established 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.

The Initiative is based on the principle of a two-way dialogue between the Governments of the United States and Japan.

Following the December 2006 exchange of recommendations between both Governments, Working Groups established under this Initiative met to discuss reform in key sectors and areas such as intellectual property, distribution, privatization of public entities, information technology, competition policy, trade and investment-related measures, commercial law, telecommunications, consular affairs, and medical devices and pharmaceuticals. A High-Level Officials Group also met in April 2007 to further 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 as well as clarify measures to be taken in the future that respond to recommendations raised by each Government.

This Sixth Report to the Leaders demonstrates progress made across a wide array of issues, including reforms that will help speed regulatory decisions, heighten transparency, improve market access, enhance competition, lower barriers to business, and protect personal information. The Report also reflects joint measures to combat the problem of counterfeiting and pirated goods as well as to promote the implementation of higher regulatory and other transparency standards throughout the Asia-Pacific region. The two Governments affirm their determination to continue to increase cooperation in bilateral, regional, and multilateral fora.

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**

The Government of Japan, under the Abe Cabinet's basic policy that aims to energize economic growth through innovation and openness, is accelerating structural reforms and engaging in policies that include the recommendations of:

- The Council on Economic and Fiscal Policy's (CEFP) "Course and Strategy for the Japanese Economy" (January 2007), which provides a roadmap for a new "creation and growth;"
- The CEFP's "Program for Enhancing Growth Potential" (April 2007), which seeks to boost productivity since it is key for creating a greater growth potential;
- The Council for the Asia Gateway Initiative's "Asia Gateway Initiative" report (May 2007), which envisions Japan as a gateway to bridge Asia and the world and seeks to incorporate the vitality and economic development of Asia;
- The Innovation 25 Strategy Council's "Innovation 25" report (May 2007), which is a long-term strategy for realizing sustainable growth and an affluent society through innovation and seeks to comprehensively advance both social system reforms and strategic research and development; and
- The Council for the Promotion of Regulatory Reform's (CPRR) First Report (May 2007), which provides the plan for regulatory reform over the next three years.

The Government of Japan will continue to actively advance regulatory reform, taking into account discussions by the CEFP and the CPRR and the recommendations of the "Asia Gateway Initiative" report and "Innovation 25."

### **I. TELECOMMUNICATIONS**

#### **A. Promotion of Competition**

1. The Government of Japan has implemented a competition policy in the telecommunications field in line with rapid advances of technology, and has thereby facilitated the development of telecommunications markets where broadband services rank among the fastest, most affordable, and most technologically advanced in the world. In Japan, fiber to the home (FTTH) service as a proportion of broadband Internet subscriptions has been increasing, the number of subscribers to FTTH service exceeded 7.9 million as of the end of December 2006, as has the average transmission speed of such services. Moreover, the number of subscribers to third generation mobile phones and that of subscribed internet protocol (IP) telephony exceeded 69 million and 14 million respectively as of the end of March 2007.
2. The Ministry of Internal Affairs and Communications (MIC) set up the "Study Group on a Framework for Competition Rules to Address the Transition to IP-Based Networks" in October 2005, and published the report finalized by the study group in September 2006. On the basis of the recommendation of the

report, MIC formulated a roadmap of measures to be implemented by the early 2010's titled the "New Competition Promotion Program 2010" which includes: 1) review of designated telecommunications facilities system (dominant regulations); 2) review of calculation method for interconnection charges; 3) establishment of interconnection rules concerning the next-generation networks (NGNs); 4) competition promotion in the mobile communications market; 5) network neutrality; and 6) the review of the universal service system. MIC is advancing this program.

3. MIC is promoting further competition in the mobile communications market through various policies, including:
  - a. Based on the revised rules for Telecommunications Numbers, which was enforced on November 1, 2006, the Mobile Number Portability system was initiated on October 24, 2006.
  - b. In February 2007, "Guidelines Concerning Applications of the Telecommunications Business Law and the Radio Law Pertaining to Mobile Virtual Network Operators (MVNO)" were revised to promote market entry into the MVNO business. The revised guidelines clarify the application of Telecommunications Business Law to MVNOs when they propose interconnection as well as utilize wholesale telecommunication services.
  - c. In November 2005, MIC assigned a spectrum for new mobile communications carriers, and a new mobile communications carrier began to provide services in March 2007.
  - d. In January 2007, MIC established the Mobile Business Study Group, which will verify the factors facilitating changes in the market environment of the mobile business and recommend measures for creating new markets through invigoration of mobile business.
4. In accordance with the "New Competition Promotion Program 2010," in April 2007 MIC released the Guideline for Application of the Competition Safeguard System, intended to periodically check the validity of the scope of designated telecommunications facilities and comprehensive fair competition requirements concerning the NTT Group (including those related to the regulatory frameworks pertaining to authorization of business activities using facilities, technologies or staff of NTT East and NTT West). The first review under this Safeguard System will be conducted during Japan FY2007.
5. In March 2007, a Study Group considering the future concept of the universal service system adopted an agenda that covers the scope and providers of universal service in the future, cost calculation methodology, and contribution methodology, in accordance with the transition to IP-based networks.

**B. Fixed Interconnection**

1. Long-Run Incremental Cost (LRIC): Taking into consideration opinions submitted through the public comment procedure and the report from the Information and Communications Council, regarding interconnection rates applicable in FY2007 on the basis of the LRIC Model, MIC revised the Rules for Interconnection Charges in February 2007. In March 2007, MIC authorized interconnection rates calculated based on the revised rules, which began to be applied in April 2007. As a result, GC interconnection was set at 4.69 yen per 3 minutes, a decrease of 7.1 percent compared to the previous fiscal year; and IC interconnection was set at 6.55 yen per 3 minutes, a decrease of 4.2 percent compared to the previous fiscal year.
  2. Next-Generation Network (NGN): Based on the New Competition Promotion Program 2010, MIC will begin examination of interconnection rules for the NGN keeping in mind full-fledged commercial launch of such services.
  3. FTTR (Fiber to the Remote terminal): In January 2007, MIC authorized interconnection tariffs of NTT East and West to allow interconnection at poles, for providing VDSL services, in accordance with revision of the notification under Regulations for Telecommunications Facilities for the Telecommunications Business, after a public comment procedure.
  4. Universal Service: Based on the profit and loss statement concerning activities for providing universal telecommunications services publicized by eligible telecommunications carriers (NTT East and West) MIC approved the universal service subsidies and the contributions applied by Universal Telecommunications Service Administrative Agency in November 2007. The amount of the contributions of interconnecting telecommunications carriers was determined to be approximately 7 yen per month per telecommunications number that each carrier has in operation.
- C. **Mobile Interconnection**: 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 2007 that the rate would be revised downward by 2.7% compared to the previous fiscal year for interconnection within the same NTT DoCoMo service area, and by 2.3% compared to the previous fiscal year for interconnection with a subscriber located in a distant NTT DoCoMo service area.
- D. **Promotion of Advanced Technologies and Services**
1. The Information and Communications Council reported Technical Requirements for the 5GHz Band Wireless Access System to MIC in December 2006, including for license-exempt use. In April 2007, the Council reported on the revision of the related ordinances for introduction of high-speed wireless local area network (LAN).
  2. The Information and Communications Council reported technical requirements for broadband wireless access systems using the 2.5GHz band in December 2006 and April 2007. In May 2007, MIC solicited public comments on its proposed license policy for broadband wireless access

systems, including eligible systems and other eligibility requirements for applicants.

## **E. Promotion of Trade in Telecommunications Equipment**

### **1. Conformity Assessment:**

- a. In February 2007, the Governments of the United States and Japan concluded negotiations and signed a Mutual Recognition Agreement (MRA) relating to conformity assessment of telecommunications equipment.
- b. In February 2007, the Governments of the United States and Japan also exchanged letters regarding an arrangement that would permit acceptance of results of conformity assessment for information technology (IT) equipment and industrial, scientific and medical (ISM) equipment conducted by accredited Japanese conformity assessment bodies with respect to Electro-Magnetic-Compatibility (EMC).

2. Type Approval: MIC is preparing for new rules for wireless LANs that allow additional antennas to be approved for a product under the same certification number.

## **II. INFORMATION TECHNOLOGIES (IT)**

### **A. IT and e-Commerce Policymaking**

1. IT Policy Plans: On April 25, 2007, the Council on Economic and Fiscal Policy released the Program for Enhancing Growth Potential, which includes further measures to promote IT innovation. The IT Strategic Headquarters (ITSH) is planning to release a new IT Priority Policy Program (Program) in summer 2007. The ITSH provided a public comment period for a draft of the Program and will consider the comments it receives. The Government of Japan will continue to promote and implement its major IT policy plans, including the New IT Reform Strategy and the Program, in a manner that fosters private-sector leadership and active participation in policymaking processes.
2. Private-Sector Input: The Government of Japan understands that it is important to seek and consider a diverse range of opinions from the private sector when creating and implementing IT and e-Commerce policies. IT policy plans such as the IT Strategy have been developed and evaluated by the ITSH and the Expert Committee on IT Strategy Evaluation, which includes members from the private sector. In addition, the ITSH has sought various opinions from interested parties, including in the private sector, by employing public comment procedures. 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.

other managed fund entities. For example, a number of states bar state employee pension plans from trading futures and options products.

### **XIII. TELECOMMUNICATIONS**

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

1. 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 and the distinction between tariffed and non-tariffed services in the United States.
2. The Federal Communications Commission (FCC) has granted licenses for two foreign-affiliated operators in the U.S. wireless market over the past year: operators controlled by NTT DoCoMo, of Japan, for providing service in Guam; and America Movil of Mexico, for providing service in Puerto Rico. In addition, in April 2007, KDDI America, Inc. entered the U.S. wireless market as a mobile virtual network operator (MVNO) with the brand name KDDI Mobile and has obtained licenses for operating in 49 states.
3. The FCC's first auction of Advanced Wireless Service (AWS) spectrum licenses (1.7 and 2.1 GHz bands) ended on September 18, 2006. A total of 1,122 licenses were offered in the auction, and 104 bidders won 1,087 licenses. The top five winning bidders based on the net amount of their winning bids include: T-Mobile License LLC; Cellco Partnership d/b/a Verizon Wireless; SpectrumCo LLC; MetroPCS AWS, LLC; and Cingular AWS, LLC.
4. During 2005, the number of mobile telephone subscribers in the United States rose from 184.7 million to 213 million, increasing the nationwide penetration rate to approximately 71 percent. The amount of time mobile subscribers spend talking and texting on their mobile phones has also increased and the volume of text message traffic grew to 48.7 billion messages in the second half of 2005, nearly double the 24.7 billion messages in the same period of 2004. Revenue per minute, which generally reflects the retail price of mobile telephone service, fell 22 percent during 2005 from \$0.09 in 2004 to \$0.07 in 2005.

#### **B. Regulatory Reform in the Broadband Era**

1. The FCC declared Broadband over Power Line (BPL)-enabled Internet access service to be an information service in November 2006. The FCC also declared wireless broadband Internet access service to be an information service in March 2007. These actions place BPL-enabled Internet access and wireless broadband Internet access services on an equal regulatory footing with other broadband services, such as cable modem service and DSL Internet access service.
2. On March 12 2007, the FCC initiated a Notice of Inquiry (NOI) to better understand the behavior of participants in the market for broadband services.

The Commission in its 2005 Internet Policy Statement announced four principles to encourage broadband deployment and to preserve and promote the open and interconnected nature of the public Internet. This NOI seeks information on the behavior of broadband market participants, including: how broadband providers are managing Internet traffic on their networks today; whether providers charge different prices for different speeds or capacities of service; whether FCC policies should distinguish between content providers that charge end users for access to content and those that do not; and how consumers are affected by these practices.

- C. **Competition in the Navigation Devices Market in the Process of Transition to Digital Television:** The Government of the United States will continue a dialogue with the Government of Japan on how the FCC enforces Section 629 of the Telecommunications Act with a view to ensuring choice in the market for navigation devices (set top boxes). Under current rules, U.S. cable operators must make available a security element separate from the set-top box. This requirement is intended to enable unaffiliated manufacturers, retailers, and other vendors to commercially market set-top boxes and other devices while allowing the cable operator to retain control over system security. Beginning on July 1, 2007 (unless granted individual waivers), cable operator must also use separable security in their set-top boxes, thus promoting market-based choice for such devices.
- D. **Access Charges:** In July 2006, the Commission issued a Public Notice seeking comment on a comprehensive intercarrier compensation reform plan (the “Missoula Plan”) filed by the National Association of Regulatory Utility Commissioners’ (NARUC) Task Force on Intercarrier Compensation. Numerous comments were received in response to the Public Notice, the due date for which was extended to February 1, 2007. Additionally, the Commission requested and recently received comment on proposed amendments to the Missoula Plan, including a process for the creation and exchange of call detail records and a new regulatory support mechanism intended to assist states that have already rebalanced rates.
- E. **Universal Service**
1. FCC Updates Approach for Assessing Contributions to Universal Service Fund (USF):
    - a. In June 2006, the Commission raised the existing wireless “safe harbor” percentage used to estimate interstate revenue from 28.5 percent to 37.1 percent of total end-user telecommunications revenue to better reflect growing demand for wireless services. This interim wireless safe harbor was last updated in 2002. Wireless carriers continue to retain the option to base contributions on their actual revenues or on traffic studies that estimate their actual interstate revenues.
    - b. In June 2006 the Commission also expanded the base of USF contributions by extending universal service contribution obligations to providers of interconnected voice over Internet Protocol (VoIP) service. For interconnected VoIP providers, the Commission

establishes a safe harbor percentage of interstate revenue at 64.9 percent of total VoIP service revenue.

2. Federal-State Universal Service Joint Board Staff Releases Monitoring Report: The staff of the Federal-State Joint Board on Universal Service released its most recent Monitoring Report on Universal Service in December 2006. This report reflects information on the telephone industry filed with the FCC through May 2006. The report addresses the various universal service support mechanisms, which amounted to about \$6.5 billion in 2005. In 2005, disbursements among the four categories of universal service mechanisms were: 58.7% for high-cost support; 28.6% for schools and libraries support; 12.4% for low-income support; and 0.4% for rural health care support. The report presents data in eleven categories.
3. The FCC Issues a Proposed Rulemaking to Address Universal Service Disbursements: On May 14, 2007, the FCC issued a Notice of Proposed Rulemaking seeking comment on the recommendation of the Federal-State Joint Board on Universal Service (Joint Board) that the Commission take immediate action to rein in the growth in high-cost universal service support disbursements. Specifically, the FCC sought comment on the Joint Board's recommendation that the Commission impose an interim, emergency cap on the amount of high-cost support that competitive eligible telecommunications carriers (ETCs) may receive. In a Public Notice released on the same day as the Recommended Decision, the Joint Board also recommended that both it and the Commission further explore comprehensive high-cost distribution reform, and sought comment on various reform proposals such as the use of reverse auctions, the use of geographic information systems (GIS) technology, the disaggregation of high-cost support, and support for broadband service.

**F. Procedures for Processing Export Licenses, TAA Approval and Other Measures Concerning Commercial Satellites**

1. The Government of the United States will continue its efforts to minimize delays and maximize transparency of procedures in export licensing and Technical Assistance Agreements (TAA) approval for commercial communications satellites in accordance with U.S. laws, regulations, and policies.
2. The Governments of the United States and Japan have conducted an earnest dialogue on export licensing for commercial satellites. Recognizing the importance of U.S.-Japan relations, the Governments of the United States and Japan will continue this dialogue on this issue.

**G. Promotion of Trade in Telecommunications Equipment**

1. In February 2007, the Governments of the United States and Japan concluded negotiations and signed a Mutual Recognition Agreement (MRA) relating to conformity assessment of telecommunications equipment.

2. In February 2007, the Governments of the United States and Japan also exchanged letters regarding an arrangement that would permit acceptance of results of conformity assessment for information technology (IT) equipment and industrial, scientific and medical (ISM) equipment conducted by accredited Japanese conformity assessment bodies with respect to Electro-Magnetic-Compatibility (EMC).

#### **XIV. INFORMATION TECHNOLOGY**

##### **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 sound performance works. The Government of the United States will ensure transparency regarding the protection for unfixed live sound performance works.
  - 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.
  - d. *Protection of Right of Rental Concerning Video Games:* The Government of the United States will continue discussions with the Government of Japan on the protection of the right of rental for computer programs with special emphasis on video game programs.

##### **B. Response to Digital Networking**

1. The Government of the United States recognizes that the efficient exploitation online of copyrighted works is important. The Government of the United States will continue to consider appropriate measures to facilitate the online exploitation of copyrighted works while ensuring adequate protection of their copyright, including through legislative measures.
2. The Government of the United States will continue to exchange information with the Government of Japan on "access controls" and "copy controls" under section 1201 of the U.S. Copyright Act, which was added by the Digital Millennium Copyright Act (DMCA). The Government of the United States