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Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Docket No. 96-115

Dear Ms. Salas:

In the above-cited proceeding, the Association of Directory Publishers ("ADP") has asserted that Section 222(e) of the Communications Act of 1934 ("Section 222(e)") requires the Commission to establish cost-based rates for subscriber list information. The Clinton Administration and the D.C. Circuit Court of Appeals recently emphasized that cost-based rates are the hallmark of competitive markets.

In its 1998 National Trade Estimate Report on Foreign Trade Barriers ("Trade Report"), the United States Trade Representative ("USTR") emphasized the Clinton Administration's position that cost-based pricing is essential to "ensuring a truly competitive market" for telecommunications services in Japan.[1] Specifically, the Trade Report explained that under the Enhanced Initiative on Deregulation and Competition Policy, the Clinton Administration

> "urged Japan to adopt a pro-competitive interconnection regime incorporating long-run incremental cost methodology. . . ."[2] Such methodology would "bring more competition to a sector long encumbered by excessive, outdated regulations and by dominant carriers . . . that exercise market power

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1 United States Trade Representative, 1998 Trade Report 197 (1998) (see Attachment A).

2 Id. (emphasis added).

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Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036-3384
202 328 8000

Telex: RCA 229800
WU 89-2762
Fax: 202 887 8979

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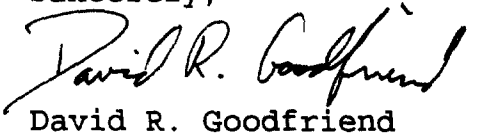
> to deter the entry and development of new competitors."[3]

Moreover, in response to Japan's agreeing to implement long-run incremental cost methodology, a senior Clinton Administration official stated that such methodology "eliminates unjustified costs from interconnection [and will] dramatically increase competitive opportunities."[4]

The connection between cost-based rates and competitive markets, as promoted by the Clinton Administration in the above statements, parallels a recent finding by the D.C. Circuit that, in competitive markets, "costs and rates converge."[5] Thus, by establishing cost-based rates for subscriber list information under Section 222(e), the Commission would enhance competition consistent with the policy of the Clinton Administration and the precedent of the D.C. Circuit.

Sincerely,



David R. Goodfriend

Enclosures

cc: Dorothy Attwood
Bill Kehoe
Richard Welch
David Konuch
Jim Schlichting
Pat Donovan
Jay Atkinson
Doug Galbi
Tanya Rutherford
Richard Metzger

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3 Id. at 196.

4 USTR Press Release, May 15, 1998 (see Attachment B).

5 MCI v. FCC, No. 97-1675, slip op. at 5 (D.C. Cir. May 15, 1998).

EXHIBIT A

1998 National Trade Estimate Report on

FOREIGN TRADE BARRIERS

United States Trade Representative

with the requests of the United States and others. Given the Council's lack of authority to compel adoption of its recommendations, however, Japanese ministries and agencies often ignored the most important recommendations. The Administrative Reform Council's mandate expired in December 1997.

In February 1998, the Hashimoto Cabinet established a Deregulation Committee, comprised of seven former members of the Administrative Reform Council's Deregulation Subcommittee. This Deregulation Committee is tasked with compiling a new three-year deregulation action plan by the end of March 1998. The Deregulation Committee's mandate beyond March 1998 is unclear. It appears the Japanese Government is considering whether and how to establish a successor entity to the Administrative Reform Council. The United States has urged that a new entity under the Prime Minister's Office be created which will have a mandate to commit Japan to implementation of new deregulation measures and monitor measures already announced.

The Enhanced Initiative on Deregulation and Competition Policy

In an effort to promote the goals of the Framework Agreement, accelerate the pace of deregulation in Japan, and increase market access for foreign goods and services, President Clinton and Prime Minister Hashimoto on June 19, 1997 agreed to establish the Enhanced Initiative on Deregulation and Competition Policy. The Enhanced Initiative addresses both sectoral and structural issues, and seeks reform of relevant government laws, regulations, and guidance which impede market access for competitive foreign goods and services. Under this initiative, five expert-level groups have been meeting: four sectoral groups in the areas of telecommunications, housing, medical devices and pharmaceutical products, and financial services; and one on structural issues, focusing on competition policy, distribution, and transparency and other government practices. Senior-level meetings, chaired by the Deputy USTR and the Deputy Foreign Minister, were held on November 14, 1997 in Washington, and March 4, 1998 in Tokyo to spur progress under this initiative. At their November 1997 meeting in Vancouver, President Clinton and Prime Minster Hashimoto agreed on the need to demonstrate concrete progress under this initiative by the next G-7 Summit in Birmingham, England in May 1998. The United States anticipates that Japan will demonstrate its commitment to carry out meaningful deregulation, to stimulate domestic demand, and to increase market access for foreign goods and services by the time of the Birmingham Summit.

In November 1997, the United States provided to the Government of Japan the "Submission by the Government of the United States to the Government of Japan regarding Deregulation, Competition Policy, and Transparency and other Government Practices." This represented a detailed submission of deregulation measures covering all of the sectoral and structural areas under the Enhanced Initiative, as well as other sectors. A summary of the key deregulatory areas follows.

Sectoral Deregulation

Telecommunications

In the telecommunications sector, the United States is seeking regulatory changes which will bring more competition to a sector long encumbered by excessive, outdated regulations and by dominant carriers (NTT and *Kokusai Denshin Denwa* (KDD)) that exercise market power to deter the entry and development of new competitors. The United States' submission targets deregulation in basic telecommunications,

direct-to-home (DTH) satellite service, wireless equipment and cable television. Specific issues include over-priced interconnection rates, foreign investment restrictions, onerous tariff and licensing procedures, restrictions on satellite services, and burdensome equipment certification procedures.

Japan has made some progress in deregulating this sector which should increase competitive opportunities. For example, as a result of bilateral consultations, direct-to-home satellite service providers will be able to offer a significantly expanded number of channels; international telecommunications service providers will be able to use leased lines to bypass the over-priced international settlement system and bring international rates in line with those of competitive markets, which are a fraction of Japan's rates; Japan will eliminate the restrictions on foreign investment in its major international carrier, KDD; it will streamline licensing and tariff procedures which unduly encumber telecommunications providers; it will eliminate restrictions on using third parties for transit for international telecommunications traffic; and it will also reduce fees and simplify procedures for testing and certifying wireless equipment. We will monitor these commitments closely.

However, ensuring a truly competitive market, especially for local telecommunications competition, will require much more. For example, the United States has urged Japan to adopt a pro-competitive interconnection regime incorporating long-run incremental cost methodology by the end of 1998, without which progress across the entire basic telecommunication sector will be in jeopardy; that Japan take action to ensure transparent, timely, and non-discriminatory access to rights-of-way for new entrants wishing to establish telecommunications or CATV infrastructure in Japan; that Japan introduce measures to ensure that dominant carriers do not engage in anticompetitive pricing; and further liberalize DTH by permitting unlimited channel use and the use of statistical multiplexing to promote more efficient use of the broadcast spectrum.

Medical Devices and Pharmaceutical Products

The United States continues to seek greater market access for U.S. medical devices and pharmaceutical products through the Enhanced Initiative on Deregulation and the Market-Oriented, Sector Selective (MOSS) Medical/Pharmaceutical talks. As Japan undertakes potentially extensive health care reforms, price reimbursement and regulatory issues remain the focus of bilateral consultations. The Administration conducted government consultations on Japanese deregulation of medical devices and pharmaceutical products in September and November 1997 and March 1998.

The bilateral consultations addressed, in particular, specific Japanese government regulatory policies that continue to hinder the ability of U.S. firms to supply innovative and cost-effective medical devices and pharmaceutical products. The United States urged Japan's Ministry of Health and Welfare to ensure that the pricing system revision under consideration follow a consistent, transparent process and not be imposed disproportionately, or inappropriately, on new and innovative medical devices and pharmaceuticals.

Of particular importance, the United States strongly opposes Japan's proposed implementation of a reference pricing system for pharmaceuticals. The United States believes that prices should be market-based.

In March 1998, in response to priority U.S. Government deregulation requests, Japan announced its

EXHIBIT B

USIS Washington File

15 May 1998

FACT SHEET: U.S.-JAPAN DEREGULATION INITIATIVE

(USTR outlines new initiatives) (1983)

Birmingham -- Following is the text of a fact sheet prepared by the Office of the U.S. Trade Representative, issued by the White House May 15, outlining a new U.S.-Japan initiative to deregulate key sectors of the Japanese economy.

(Note: In the text "billion" equals 1,000 million; "trillion" equals 1,000,000 million.)

(begin text)

U.S.-Japan Enhanced Initiative on Deregulation and Competition Policy

FACT SHEET

The following highlights the progress made during the first year of the U.S.-Japan Enhanced Initiative on Deregulation and Competition Policy as announced in a joint report issued by President Clinton and Prime Minister Hashimoto today.

Telecommunications

Over-regulation and restrictive practices by Japan's incumbent telecommunications carriers have stifled competition and slowed growth in Japan's $125 billion telecommunications and broadcasting services market. As a result, Japan's telephone rates are among the highest in the OECD.

Under the Enhanced Initiative, Japan agreed to adopt a new regime to lower the rates that telecommunications carriers must pay to connect to Japan's local telecommunications network (reduction in interconnection rates). When implemented at the target date of the year 2000, the long-run incremental-cost methodology (LRIC) which eliminates unjustified costs from interconnection will dramatically increase competitive opportunities. Prior to implementation of LRIC, Japan committed to reducing interconnection rates as much as possible, which should increase competitive conditions.

Japan has also agreed to introduce measures to facilitate access to land and physical facilities such as roads that new companies need to construct their own networks. In addition, the Japanese Government has agreed to liberalize its international services market by permitting companies to provide alternatives to traditional international service. These steps will reduce the huge fees U.S. carriers now pay to Japanese carriers, encourage new entrants into the Japanese market, and result in hundreds of millions of dollars of additional services and equipment sales in this sector over the next few years.

Japan has also relaxed restrictions in its satellite services market, permitting a more than doubling of the number of channels broadcasters can provide to Japanese consumers. Measures taken will save service providers in this market millions of dollars and permit them to offer the innovative, consumer-oriented packaging which is transforming distribution of pay TV satellite services worldwide.

Japan will simplify a variety of standard procedures required to enter