

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
The Effect of Foreign Mobile)	Docket No. IB 04-398
Termination Rates on U.S. Consumers)	FCC 04-247
)	

COMMENTS OF SOFTBANK BB CORPORATION

Softbank BB Corporation (“Softbank BB”), by its attorneys, hereby comments on the Notice of Inquiry (“Notice” or “NOI”)¹ in the above-captioned proceeding, specifically to address the effects of Japanese mobile termination rates on U.S. consumers.

As the Commission has noted, information from other sources already indicates that U.S. customers are being overcharged for international calls to mobile phones.² Softbank BB hereby provides additional information to the Commission demonstrating that:

- The Japanese mobile communications market is not competitive.
- This lack of competition results in termination rates for U.S. calls to mobile telephones in Japan at rates that are approximately 6 times more than rates for termination rates to fixed line locations.
- There appears to be no valid commercial reason for this great disparity in termination rates.

To assure that U.S. consumers are charged the most competitive rates for mobile calls to Japan, Softbank BB urges the Commission to take new steps to encourage

¹ *In the Matter of The Effect of Foreign Mobile Termination Rates on U.S. Consumers*, Notice of Inquiry, 19 FCC Rcd 21395 (2004) (“NOI”).

² *Id.* at 21413.

competition in the mobile communications market in Japan and to curb excessive international termination rates in that market.

Softbank BB also suggests that the Commission collect relevant data regarding retail and carrier-to-carrier charges to determine more closely the level of competitiveness in the Japanese mobile communications market and the degree to which current charges exceed costs. Finally, as discussed below, Softbank BB requests the Commission consider applying the International Settlements Policy (“ISP”) to the extent it concludes that the Japanese mobile communications market is not competitive.

DISCUSSION

I. Introduction

Softbank Corporation (“Softbank”) is a publicly traded, Japanese corporation based in Tokyo. In 2000, Softbank formed Softbank BB, a subsidiary, to provide broadband and other telecommunications services in Japan. Currently, Softbank BB offers DSL, Voice-over Internet Protocol (“VOIP”), IPTV and fixed wireless roaming services. These services include the transmission, origination and/or termination of communications to and from the United States.

Softbank BB’s interest in this proceeding stems from the closure of the Japanese mobile market to new entrants, like itself, which it believes creates a lack of competitiveness and perpetuates excessive charges for U.S. consumers. Softbank BB has demonstrated that when the previously closed Japanese broadband market became open to new entrants competition quickly resulted in lowered prices. Softbank BB achieved a substantial level of broadband penetration in Japan in less than five years, creating a broadband network that provides Japanese citizens with the fastest and least costly broadband service in the world. Softbank BB charges ¥59 per month for 1Mbps (Megabits per second) broadband service, an amount far less than its competitors when

compared to the speed of service it provides.³ Softbank BB, if allowed to enter the Japanese mobile market, is committed to lowering mobile rates generally, but also lowering mobile termination rates for U.S. consumers and other international callers.

The Japanese mobile communications market is essentially a duopoly, with NTT DoCoMo and KDDI sharing 80 percent of the market.⁴ NTT DoCoMo, moreover, is owned by the dominant fixed-line telephone company in Japan, NTT, which is itself 45 percent owned by the Japanese government. Softbank BB is prepared to enter as an aggressive competitor to the dominant carriers, but cannot do so unless it can obtain a spectrum license from the Japanese government.

As discussed below, however, despite the concentrated nature of the mobile market, Japan's Ministry of Internal Affairs and Communications ("MIC"), which is charged with licensing spectrum in Japan, pursues policies that are hostile to new entrants. This situation has been the subject of statements by both the United States Trade Representative ("USTR") and the European Commission protesting the continuing barriers to competition in Japan's telecommunications market.⁵ The barriers to competition also prompted Softbank BB to file a lawsuit in Japan against the MIC,⁶ as well as a Section 1377 letter with USTR, which is attached to these comments and incorporated herein.⁷ Softbank BB urges the FCC to take further steps to open Japan's

³ See Ex. 1 (Letter from Masayoshi Son, President and CEO of Softbank, to Ms. Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, re WTO General Agreement on Trade in Services (Dec. 17, 2004)) ("Section 1377 letter") at Attachment 1 (ADSL - Charge per 1Mbps).

⁴ See Ex. 2 hereto (Number of Mobile Phone Subscribers and Market Share). NTT and KDDI are the former domestic and international Japanese telephone monopolies, respectively.

⁵ See Ex. 3 (USTR, Annual Regulatory Reform Recommendations (Oct. 14, 2004) ("USTR Recommendations")) at 1 and Ex. 4 (European Commission, EU Priority Proposals for Regulatory Reform in Japan (Oct. 28, 2004) ("EU Proposals")).

⁶ *Softbank BB Corp. v. MIC*, Petition for Injunction of Unfair Allocation (Civil Division, Tokyo District Court) (filed Oct. 13, 2004).

⁷ See Ex. 1 hereto (Section 1377 letter).

mobile communications market to competition to protect American consumers from excessive termination rates.

II. The Rates Charged to Terminate U.S. Calls to Mobile Telephones in Japan Appear to Have No Relationship to Costs and Return Monopoly Profits.

The Commission has requested data and other information regarding foreign mobile termination rates.⁸ This information is somewhat difficult to obtain, given that MIC has not studied this issue and does not require that rates be made public. From the best available information obtained by Softbank BB, however, termination rates on the U.S.-Japan route appear to be supracompetitive. The termination rates in Japan for incoming international calls to mobile phones are six times higher than the rates for terminating calls to fixed line phones. That is, the rate for an incoming call from the U.S. to a Japanese mobile phone customer is approximately \$0.13/min., while the rate for an incoming call to a Japanese fixed line customer is \$0.02-0.03/min.⁹

In contrast, termination rates on calls from Japan to the U.S. are \$0.02/minute, regardless of whether the calls are to mobile or fixed line phones.¹⁰ Given the available technology, and the fact that Japan is a highly developed industrial country like the United States encountering similar kinds of costs in providing mobile services, there appears to be no reason for such a disparity 1) between mobile and fixed termination rates in Japan, and 2) between termination rates in the U.S. and in Japan.

The lack of competitiveness in the Japanese mobile market is also indicated by the charges for basic mobile services in Japan, which are excessive compared to the charges in other countries. For example, for every \$100 per month paid by a subscriber in Japan for basic mobile service (plus 150 minutes), the charge for equivalent services in the U.S. would be \$63 per month, in the U.K., \$64 per month, and in France, \$65 per

⁸ NOI, 19 FCC Rcd at 21396.

⁹ See Ex. 1 hereto at Attachment 3 (Termination Charges in Japan and U.S.).

¹⁰ *Id.*

month.¹¹ In Japan, however, despite having a higher ARPU than the United States and other countries, the average monthly call minutes remains low.¹²

As the Commission recognized in the NOI, studies indicate that in calling party pays (“CPP”) countries there is limited incentive for carriers to keep termination rates low because mobile termination operators do not wish to lower costs for competitors.¹³ The situation in Japan bears out this view, but does not justify the excessive charges. As the Commission noted in the NOI, the rates charged by NTT DoCoMo are much higher than the rates charged in Korea, which also follows the CPP regime. Accordingly, it is not merely CPP that leads to excessive mobile rates and foreign mobile termination rates. That is due to the lack of competition in the Japanese mobile market and the Japanese government’s failure to promote competitive policies for that market.

III. The Japanese Mobile Communications Market is Not Competitive.

NTT DoCoMo is 58% owned, and thus controlled, by NTT, the former government monopoly that is still 45% owned by the Japanese government. Measured by the number of mobile subscribers, NTT DoCoMo has a 56% share of the Japanese mobile, and KDDI has a 26% share of the market.¹⁴ In fewer than ten years, the number of Japanese mobile subscribers has grown from less than two million to more than 80 million.¹⁵ Despite this market growth, however, the market share held by NTT

¹¹ See Ex. 1 hereto at Attachment 2 (Comparison of Mobile Telephony Rates - Worldwide).

¹² See Ex. 5 hereto (Charge Comparison with Other Counties).

¹³ NOI, 19 FCC Rcd at 21401.

¹⁴ See Ex. 2 hereto (Number of Mobile Phone Subscribers and Market Share). NTT DoCoMo has been allocated 58 MHz on the 800 band, 11 MHz on the 1.5 GHz band and 40 MHz on the 2 GHz band. See Ex. 6 hereto (Japanese Spectrum Allocation for Mobile Use). KDDI has been allocated 30 MHz on the 800 band, 20 MHz on the 1.5 GHz band, and 20 MHz on the 2 GHz band, the latter of which it does not use. *Id.* Finally, Vodafone has been allocated 23 MHz on the 1.5 GHz band and 40 MHz on the 2 GHz band, but does not use 10 of its allocated MHz on the 2 GHz band. *Id.*

¹⁵ Ex. 2 hereto.

DoCoMo and KDDI remained constant, a hallmark of markets lacking effective competition.¹⁶

Softbank BB has retained Gregory L. Rosston, Deputy Director of the Stanford Institute for Economic Policy Research at Stanford University and formerly Deputy Chief Economist at the FCC (“Rosston”), to review the facts presented in these comments regarding the Japanese mobile communications market.¹⁷ As shown in the attached Rosston statement, the Japanese mobile telecommunications sector has classic examples of non-competitive market outcomes – higher prices and lower usage for both Japanese and foreign (including U.S.) consumers.¹⁸ Rosston recommends that, in this proceeding, the Commission seek answers to additional information requests in order to obtain a more thorough understanding of the relevant market forces at play in Japan and the potential harm to U.S. consumers.¹⁹

Even on the basis of present information, however, Softbank BB submits that it is the lack of competition in Japan’s mobile communications market, rather than some substantial difference in underlying costs, that results in charges for mobile communications services, and mobile termination rates, that are many times higher than the corresponding charges for wireline and broadband services.

A regulatory policy that fosters spectrum availability for multiple entrants, including new entrants, is a key element of achieving competitive mobile markets in the U.S. and other industrialized countries. By contrast, Japan pursues spectrum licensing policies that are hostile to a multiplicity of carriers and new entrants. The government of Japan, primarily through MIC, has been disinclined to adopt competitive policies with regard to spectrum allocation. In awarding spectrum in recent years, MIC has chosen to give additional spectrum to the incumbents rather than to new entrants, even

¹⁶ *Id.*

¹⁷ *See* Ex. 7 hereto (Rosston Statement).

¹⁸ *Id.*

¹⁹ *Id.*

through the incumbents are not making full use of available spectrum.²⁰ In fact, the U.S. Embassy in Japan has criticized MIC for failing to require the return of unused spectrum and to use cost incentives (regulatory fees) to prevent spectrum warehousing.²¹

IV. Japan's Regulatory Authority Does Not Sufficiently Encourage Competition.

The Commission also sought comment on the actions of foreign regulatory authorities with regard to achieving lower foreign mobile termination rates.²² In Japan, MIC, which is not an independent regulatory agency, is the gatekeeper for the mobile market in Japan. Its substantive policies with regard to promotion of competition are inadequate and it compounds this failure by refusing to institute a fair, independent and transparent regulatory process.

There is a lack of transparency in MIC's procedures, as it does not make public all comments submitted in response to its proposed policies, and does not reveal the identity of commenters.²³ Moreover, it does not make decisions openly. For example, in 2003, MIC did not decide the allocation plan for 5 MHz of spectrum on the 2 GHz band in an open proceeding. In another example, during MIC's public hearing process for the 800 MHz proceeding, MIC limited the participants and issued minutes that did not reflect the entire hearing, omitting the controversial discussions.

²⁰ In contrast, in addition to allowing open entry into mobile communications markets, the FCC has fostered competition, for many years as the market was in its developmental stage, through the application of strict spectrum aggregation limits to prevent any single carrier from obtaining too great a share of the market, *see* 47 C.F.R. § 20.6, and, more recently, through the imposition of divestiture and other conditions on the proposed mergers of wireless carriers, so as to prevent the undue concentration of market power. *See, e.g., AT&T Wireless Services et al., Memorandum Opinion and Order, 19 FCC Rcd. 21522 at 21627.* Mexico, which has four national competitors in its mobile market, similarly has sought to foster competition by encouraging new entrants through a newly announced policy of limiting to 35 MHz the spectrum allowed to any mobile operator in a local market.

²¹ *See* Ex. 8 hereto (American Embassy Comment to MIC).

²² NOI, 19 FCC Rcd at 21396.

²³ *See* Ex. 9 hereto (American Embassy Comment re: MIC Administrative Process).

Moreover, in August 2004, MIC announced its intention to reallocate spectrum in the 800 MHz band. Although MIC provided a notice and comment period for this action, it also stated its conclusion in the public notice that the incumbents, NTT and KDDI (the former domestic and international Japanese telephone monopolies, respectively), were the only “qualified providers” eligible to receive the spectrum.²⁴ Softbank BB protested the proposed allocation and also indicated that it would seek judicial relief, action which resulted in the hearing. Although MIC’s own records show that NTT and KDDI are not fully using spectrum they already had, MIC awarded the additional spectrum to those two carriers, claiming they may need the spectrum for potential “overflow” of customer use. In sum, MIC chose to entrench further the dominant carriers by awarding them additional spectrum.

MIC’s actions drew objection from the European Commission, which stated the following view:

More controversial, are the proposals based on the Frequency Reorganization Plan announced by MIC in October 2003 to raise the level of performance from the 2nd Generation to the 3rd Generation mobile communication system (IMT 2000) in the 800 MHz band. If as stated, the objective is to ensure compatibility with other countries, the proposal should consider multiple options for the assignment of spectrum instead of focusing only on the 800 MHz band. This point is explicitly recognised but no corresponding proposal has been made. The need to upgrade mobile communications systems from 2G to 3G is clear, but additional frequency spectrum should be based on future requirements expressed by all 3G operators. Therefore, frequency allocation should be made on a competitively neutral basis instead of automatically re-allocating the 800MHz spectrum to DoCoMo and to KDDI. Against this background, the proposed allocation would distort competition and discriminate unfairly against other providers.²⁵

²⁴ At that time, NTT had spectrum on the 900 MHz, 1.5 GHz and 2 GHz bands, and KDDI had spectrum on the 900 MHz and 2 GHz bands.

²⁵ Ex. 4 hereto (EU Proposals) at 15.

MIC also lacks neutrality and impartiality. First and foremost, as the USTR has found, MIC still controls some of NTT's business decisions.²⁶ Second, there is a "revolving door" between MIC and the dominant carriers, NTT and KDDI. High-level officials frequently move between government and the private entities, and MIC officials often receive "golden parachutes" after retirement in the form of lucrative jobs with NTT and KDDI.²⁷ MIC's decisions in awarding spectrum to NTT and KDDI indicate its favoritism towards these entities.

The USTR's recent Annual Regulatory Reform Recommendations call for MIC to strengthen its competitive safeguards because "it remains difficult for competing carriers . . . to offer attractive alternatives to NTT's regional carriers and mobile operator."²⁸ The Recommendations particularly stress the need for MIC to institute transparent and competitive policies with regard to the assignment of spectrum for wireless services.²⁹ The USTR, thus, recommended that MIC investigate whether termination rates to NTT's network "are set at reasonable, competitive levels," and questioned whether there was competitive neutrality in retail rate setting.³⁰ USTR also recommended that MIC require transparent pricing methodology and publish quantitative data regarding network access rates.³¹ Importantly, USTR questioned whether "all mobile carriers exert market power in the sub-market for call termination," and called on MIC to investigate this matter.³²

²⁶ See, Ex. 3 hereto (USTR Recommendations) at p. 1 (recommending that the Japanese government "end MIC's control over NTT's business decisions.") and Annex-1 (recommending that the Japanese government end its requirement that it own a specific amount of NTT shares and that foreign ownership of NTT be restricted).

²⁷ See Ex. 10 hereto (List of Former MIC Officials Now Working for NTT and KDDI).

²⁸ Ex. 3 hereto (USTR Recommendations) at 1.

²⁹ *Id.*

³⁰ Ex. 3 hereto (USTR Recommendations) at 1.

³¹ *Id.* at Annex-2.

³² *Id.* at Annex-5.

In October 2004, the European Commission (“EC”) issued a similar report critical of Japan’s interconnection charges.³³ In this report, the EC noted that, “interconnection charges in Japan are still significantly above international benchmarks.”³⁴ Clearly, MIC has much work to do to open Japan’s mobile market to competition and require fair and competitive mobile termination rates for both domestic and foreign calls to Japanese mobile subscribers.

V. Recommended FCC Action.

Softbank BB requests that the Commission investigate whether Japan’s mobile telephone market is competitive. As these comments demonstrate, the evidence strongly indicates that there is market power abuse in the Japanese mobile market and that U.S. consumers suffer as result in the form of excessive termination rates for calls destined to mobile communications networks in Japan. To the extent the FCC determines that this is the case, to help ameliorate the worst of the effects on U.S. consumers, Softbank BB urges the Commission to apply its international settlement policy (“ISP”) to U.S. communications to and from mobile networks in Japan.³⁵

Additionally, Softbank BB requests that FCC obtain responses to the information requests attached to the Rosston Statement regarding the Japanese mobile market.³⁶ Such information will assist the Commission in determining the level of competition in Japan’s mobile communications market.

Finally, Softbank BB requests that the FCC, in conjunction with the Departments of State and Commerce, and the USTR, engage in bi-lateral discussions with the Japanese government to encourage that government (a) to make its processes more

³³ Ex. 4 hereto (EU Proposals) at 14.

³⁴ *Id.*

³⁵ As the Commission recognized in its most recent ISP reform proceeding, benchmark compliance does not, in and of itself, demonstrate that a market is competitive. *In the Matter of International Settlements Policy Reform; International Settlement Rates, First Report and Order*, 19 FCC Rcd 5709 (2004).

³⁶ See Ex. 7 hereto (Rosston Statement).

transparent, (b) to conduct and publish studies on the competitiveness of its telecommunications markets, (c) to make rates publicly available and, (d) more generally, to take practical steps to foster new competitive entry into the mobile communications market in Japan.

Respectfully submitted,

SOFTBANK BB CORPORATION

Masato Suzaki
GM, Legal Department
Softbank Corporation
24-1, Nihonbashi-Hakozakicho,
Chuo-ku
Tokyo 103-8501, Japan

By: 
Henry Goldberg
Laura Stefani

GOLDBERG, GODLES, WIENER &
WRIGHT
1229 Nineteenth Street, N.W.
Washington, D.C. 20036
(202) 429-4900

Its Attorneys

January 14, 2005

EXHIBIT 1



December 17, 2004

Ms. Gloria Blue
Executive Secretary
Trade Policy Staff Committee
ATTN: Section 1377 Comments
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

Re: Japan: WTO General Agreement on Trade in Services
WTO Reference Paper

Dear Ms. Blue:

Pursuant to Section 1377 of the Omnibus Trade and Competitiveness Act of 1988, 19 U.S.C. § 3106, the Office of the United States Trade Representative ("USTR") has invited comments regarding compliance with certain telecommunications trade agreements. Softbank BB Corp. ("Softbank BB") respectfully responds to this request based on its experience with Japanese telecommunications markets and regulatory processes, offering its first-hand perspective to help the USTR formulate its report on competition in Japanese telecommunications markets.¹

Softbank BB seeks, and urges the USTR to seek; Japanese telecommunications markets that are open to competition based on efficiency and are subject to independent, fair, and transparent regulation. In particular, Softbank BB urges the USTR to (1) press the Japanese Government to open its mobile market by granting spectrum to qualified

¹ The stated purpose of the USTR's review is to "determine whether any act, policy, or practice of a country that has entered into a telecommunications trade agreement with the United States is inconsistent with the terms of such agreement." With regard to the WTO Basic Telecoms Agreement, you seek comments on whether any WTO member is acting in a manner that is inconsistent with its commitments, including the Reference Paper, or with other obligations, including the Annex on Telecommunications. Request for Comments Concerning Compliance with Telecommunications Trade Agreements, 69 Fed. Reg. 68,439 (Nov. 24, 2004).

new entrants,² and (2) drive the Japanese Government to resist NTT's efforts to backtrack on its obligations to unbundled network fiber on reasonable terms. Our position is entirely consistent with the many statements of the USTR in its Annual Reform Recommendations to Japan.

It should be noted that Softbank BB's interest in the USTR review is somewhat different from that of most parties submitting comments pursuant to Section 1377. As a Japanese company, it is not asserting rights to non-discrimination under bilateral or multilateral agreements involving Japan and the United States. But, like any actual or potential competitor from outside Japan, Softbank BB is keenly interested in a level playing field—a field in which Japanese consumers enjoy the benefits of effective competition and potential entrants are given a fair and equal opportunity to compete. To the extent that the USTR, the European Commission, or other government agencies are able to persuade or oblige the Government of Japan to institute fair administrative processes and pro-competitive policies in telecommunications, Softbank BB, as well as consumers in Japan and the U.S., will benefit from increased competition.

Softbank BB is the wholly-owned subsidiary of Softbank Corp., a publicly-traded Japanese company, based in Tokyo. Softbank BB was formed in 2000 to provide broadband access and other competitive telecommunications services in Japan. It offers services in voice-over internet protocol, fixed wireless roaming, and IPTV in addition to DSL, and it is seeking to enter the mobile telecommunications market in Japan. These services, which Softbank BB is offering and is seeking to offer, affect U.S.-Japan communications, because they transmit, originate and/or terminate communications to or from the United States.

The Government of Japan, and more specifically the Ministry of Internal Affairs and Communications ("MIC"), has been frequently reluctant to open telecommunications markets to new competition or to institute a system of independent, fair, and transparent regulation. This regulatory deficiency has been especially clear in the processes that MIC uses to award radio spectrum licenses, which favor dominant incumbents over qualified potential entrants. As a future competitor in the fast-growing mobile telecommunications industry in Japan, Softbank BB is being injured by the clear deficiencies in the processes employed by MIC in awarding mobile licenses.

Softbank BB contends that, in order to have an effectively competitive telecommunications market, the Government of Japan must place the interest of the consumer above private entities' interests, and promote (i) reasonable interconnection

² Softbank BB believes that it is especially well qualified as a potential entrant based on its track record in providing broadband access in Japan. Since its entry, Softbank BB has led the market to much higher speeds and lower prices than were available before – or are available now in other parts of the world (including the U.S.).

rates, (ii) sufficient competition to assure reasonable mobile termination fees and (iii) a fair and open spectrum allocation process. By doing so, the Government of Japan would provide the benefits of competition for consumers in the U.S. and Japan, as well as permitting entry by qualified providers such as Softbank BB.

Effective Interconnection at Fair Rates

In 2000, then-U.S. Trade Representative Barschefskey negotiated an agreement on interconnection with Japan, based on Japan's obligations under the GATS and the Reference Paper.³ In one of the most relevant sections of the 2000 agreement, Japan pledged to open new points of access ("unbundling") to NTT's network and to enact rules to ensure fair usage rates and connections, with the understanding that interconnection issues are key to enhancing competition.⁴ Also, interconnection has been a concern of the USTR in almost all of its Annual Regulatory Reform Recommendations to Japan.⁵ Since 2001, USTR has urged Japan to broaden access to NTT network elements for competitors. More recently, in 2003, the USTR urged Japan to "address structural flaws in the 2003-2004 interconnection rate methodology" in order to "[encourage] cost-oriented and reasonable interconnection rates that promote efficient competition."

Softbank BB strongly believes that effective interconnection and unbundling are very important issues; and therefore it urges USTR to keep up its efforts in this area. In Japan, where NTT controls the entire facilities infrastructure, these policies are especially important. Softbank BB's success in creating a broadband telecommunications system, with higher speeds and lower consumer charges than available in the U.S. and the EU,⁶ was built upon Softbank BB's ability to obtain effective access to NTT's analog and fiber facilities at reasonable rates. Lately, however,

³ Importantly, Section 2 of the Reference Paper states that interconnection must be supplied by the incumbent "under non-discriminatory terms, conditions...and rates and of a quality no less favorable than that provided for its own like service."

⁴ USTR Press Release on Japan Interconnection Rates, dated July 19, 2000.

⁵ It is interesting to note that this issue was recently discussed by the European Commission in its Priority Proposals for Regulatory Reform in Japan (published October 28, 2004) ("EC Proposals"). The EC Proposals noted that "interconnection charges in Japan are still significantly above international benchmarks."

⁶ For example, Softbank BB charges approximately ¥59 per 1Mbps (Megabits per second) per month, while NTT charges consumers ¥2,127 per month for the same connection speed. The differences in various U.S. and EU areas are staggering for the 1Mbps service: ¥4,432/month (New York); ¥6,474/month (London); and ¥5,850/month (Paris). See Attachment 1.

NTT has been seeking the elimination of its unbundling and line sharing obligations and has pointed to the recent policies of the FCC to support this position. Thus, it is important for the USTR to make clear that the FCC's policies are based on the very different competitive situation that prevails in the U.S. — including very high cable television penetration that provides an alternative (and competitive) facilities path to over 90% of American homes.⁷

Reasonable Termination Fees on Calls to Mobile Phones

The performance of Japan's mobile telephone market is monopolistic — with consumers being charged drastically high prices for basic mobile phone services and imposing high termination fees upon foreign callers, while Softbank BB and other potential competitors are kept out of the market. For basic services, a standard comparison of overseas and Japanese fees shows the excessive (in some cases almost double) monthly service rates borne by Japanese mobile phone consumers. For example, if Japanese mobile users pay an average of \$100 for basic fee plus 150 minutes for 1 month; then U.S. mobile users would only pay an average of \$63, while U.K. users would only pay an average of \$64, and users in France would only pay an average of \$65. See Attachment 2.

In general, Japan has failed to establish an effective competitive environment that would generate reasonable mobile termination fees for calls originating outside of Japan. For example, U.S. callers are hostage to supracompetitive termination fees, which are paid almost exclusively by the U.S. caller on calls originating in the United States. This sentiment was clearly highlighted by the USTR in its 2003 Annual Reform and Recommendations which urged Japan to "investigate if rates for termination to the NTT DoCoMo network are set at reasonable, competitive levels" and cited "serious erosion in new entrants' ability to compete against NTT companies."

When mobile termination rates in Japan are compared with rates elsewhere (or even if they are compared to Japanese fixed-line termination rates on international calls to Japan), foreign callers are grossly over-paying. For example, mobile termination charges in Japan are more than six times those for international incoming calls on fixed lines: Incoming calls from the U.S. to a Japanese fixed line consumer are \$0.02-0.03/min., while incoming calls from the U.S. to a Japanese mobile phone customer are approximately \$0.13/min. Meanwhile, termination fees on calls from Japan to the U.S.

⁷ Japan's access case is just factually very different from the U.S., where U.S. telecommunications service providers have multiple routes into households — e.g., cable, telephone wire, and even satellite services. Moreover, non-state owned providers exist for that access, especially in urban areas (e.g., competitive local exchange carriers). Thus, access in the U.S. has built-in alternatives for non-incumbent providers, while providers in Japan are completely reliant on NTT permission for access.

are \$0.02/min., regardless of whether they are to a fixed line or mobile phone. See Attachment 3. Thus, Japanese regulators have failed to curb the abuses of the dominant wireless carriers in Japan (NTT DoCoMo and KDDI), or authorize new entry to inject new competition that would curb these abuses.

If Softbank BB is permitted to enter the mobile market, it is committed to reducing the termination charges on domestic and international calls to Japan. As with broadband services, new competition from Softbank BB should be sufficient to end the situation where Japan has some of the highest termination charges among the G-8 countries.

A Fair and Open Spectrum Allocation Process

The process by which MIC allocates spectrum in Japan is a matter of urgent concern to Softbank BB, and we urge that the USTR give the subject a high priority in its Section 1377 report and discussions with the Japanese government. In the frequency bands allocated for mobile communications, the MIC policy seems designed to entrench further two competitors that are charging some of the highest cellular phone rates to consumers anywhere in the world.

Accordingly, MIC's procedures and policies on spectrum allocation are plainly deficient with respect to creating a competitive process in two areas: first, there is a lack of transparency in spectrum procedures and decisions; and second, there is a lack of neutrality and independence among telecommunication services regulators.

The USTR has regularly supported the position that potential entrants and international callers would benefit from a much needed improvement in transparency and predictability of the rules and procedures used to allocate spectrum and potentially open the market to competition.⁸ For example, the most recent USTR Annual Regulatory Reform Recommendations (published on October 14, 2004) urges Japan to "take steps to transfer regulatory functions to an independent agency not under ministerial authority, *and end MIC's control over NTT's business decisions.*"⁹ (Emphasis added.)

⁸ The USTR's position has been echoed by other governments. The EC Proposals also described Japan's proposed system for allocation as "outdated and counterproductive" and stated that "frequency allocation should be made on a competitively neutral basis instead of automatically re-allocating the 800MHz spectrum to DoCoMo and KDDI. Against this background, [Japan's current] allocation would distort competition and discriminate unfairly against other providers."

⁹ Likewise, the EC Proposals suggest that there exists in Japan "an inappropriate mixing of industry promotion and regulatory oversight."

Unfortunately, U.S. and European concerns over spectrum allocation and biased oversight have been underscored during Softbank BB's attempt to enter the mobile telecommunications market in 2003-2004 by obtaining spectrum, for a planned market entry in 2006-2007. In October 2003, Softbank BB submitted a demand paper to MIC for slivers of the 2GHz band that were going unused by the incumbents (DoCoMo, KDDI and Vodaphone). MIC responded by stating that the remaining bands were to be reserved for the benefit of the incumbents, and rejected Softbank BB's request. Shortly thereafter, MIC quietly awarded the bands to the incumbents.¹⁰ In contrast to the important revisions of Telecommunication Business Law, there were very few significant revisions to the Radio Law. This lack of legislative focus in favor of competition has fostered an environment where it appears there has been some agreement between MIC and the incumbents concerning spectrum allocation and delay in implementation of fair and transparent telecommunications regulation in Japan.

Then, Softbank BB decided to focus on obtaining 800MHz spectrum. It formed this plan in August 2004, after the MIC announced that it planned to reallocate the 800MHz spectrum in ways that would make additional spectrum available, a step that Softbank BB took, because 800MHz spectrum is more efficient and hence a system can be built out with fewer base stations. MIC, however, awarded this spectrum in a manner that would entrench the dominance of NTT DoCoMo and KDDI. MIC labeled these two already dominant wireless carriers as the only two "qualified providers," thereby excluding Softbank BB and all other potential competitors from any 800MHz spectrum. As the same time MIC pronounced its allocation to the incumbents, it started the public comment period running, thus preventing other providers from being capable of applying for spectrum and severely limiting the public input on and review of MIC's allocation processes. Thus, Softbank BB's plans to obtain 800MHz spectrum were moot from the first opportunity to apply because MIC's process refused to consider Softbank BB as a potential licensee.

Unable to qualify under the incumbent-favoring policies of MIC, Softbank BB has since sought judicial relief in the Tokyo District Court. Its pleadings first requested (1) a suspension in the execution of the spectrum allocation plan for 800MHz, and (2) the formulation of a new allocation plan and acceptance of new license applications. In addition, Softbank BB petitioned for a preliminary injunction against the Government of

¹⁰ When Softbank BB objected, MIC defended itself by stating that incumbent providers needed those bands for potential "overflow" of customer use. MIC's actions, however, did not comport with market realities - for example, one of the incumbents, KDDI, was publicly known as having substantial unused (or under-utilized) spectrum in the 2GHz range.

Japan and MIC, as well as NTT DoCoMo and KDDI, with respect to prohibition of disposal of records of dealings with NTT and KDDI.

MIC decided to conduct Committee hearings on effective utilization of frequency bands after Softbank BB had indicated that it would seek judicial relief. This hearing process was hardly a "fair and open." MIC selected the Committee members through a secret process. The meeting was conducted on the condition that the number of attendees per company was severely limited. The "minutes" prepared by MIC did not reflect any disputed points, nor did the minutes discuss problems with the allocation process. Importantly, Softbank BB requested the MIC to inform them of the next step in the spectrum allocation process. As of today, MIC has neither informed Softbank BB, nor the public, about MIC's plans for spectrum allocation.

In its response to the Tokyo District Court, MIC explained that (i) Softbank BB could apply for 800MHz spectrum without the announcement of an application period by Minister of MIC based on the Radio Law, since MIC had allocated 800MHz spectrum in the past without such an announcement; but (ii) Softbank BB but had failed to apply. The court then suggested that Softbank BB should apply for the license and Softbank BB has since filed an application for 800MHz spectrum. Overall, it seems MIC's handling of Softbank BB's efforts to enter the mobile telecommunications market dramatically illuminate Japan's lack of transparency in spectrum procedures and lack of neutrality and independence of telecommunication services regulators (and hence its failure to meet its WTO commitments).

Conclusion

For the reasons described above, Softbank BB urges the USTR to (1) ensure fair and non-discriminatory process for allocating mobile service spectrum in accordance with the WTO General Agreement on Trade in Services and the Reference Paper; (2) press the Japanese Government to adopt a pro-competitive policy of favoring qualified new entrants when awarding mobile radio licenses and (3) urge the Japanese Government to resist NTT's efforts to backtrack on its obligations to unbundle network elements and permit line sharing on reasonable terms and (4) urge the Japanese Government to hold NTT, as the entrenched facilities monopolist, to its fair operation of co-location and rights of way and to press NTT to open its customer data on reasonable terms.

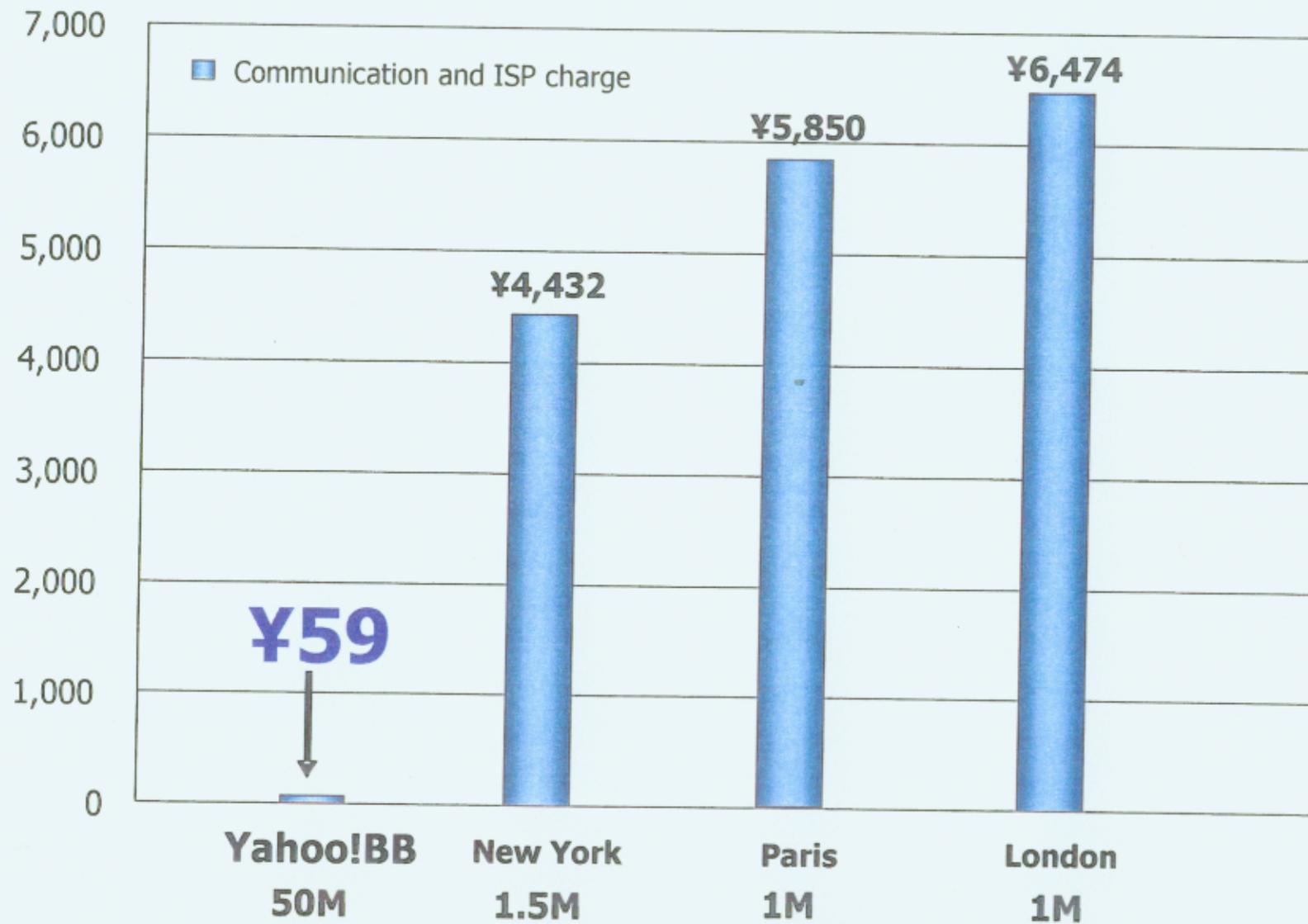
Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

President and CEO
Masayoshi Son

7

ADSL – Charge per 1Mbps



Source: "Survey of difference between telecommunications prices in Japan and overseas,2003," MPHPT

2

Comparison of Mobile Telephony Rates - Worldwide



Mobile phone rates in Japan are much higher than elsewhere.

Standard Rate Comparison of overseas and Japan in %

	Japan	US	UK	France	Germany
Mobile Phone ^{*1} (monthly fee + charge 150 minutes)	100	63	64	65	76
Fixed Line ^{*1} - Long Distance Call (weekdays Daytime 3min. call)	100	48	37	71	68
ADSL ^{*2} (charge per 1Mbps)	100	7512	10973	9915	4934

Source: ^{*1} White Paper on National Life, 2004

^{*2} "Survey of difference between prices in Japan and overseas for telecommunications, 2003, MIC

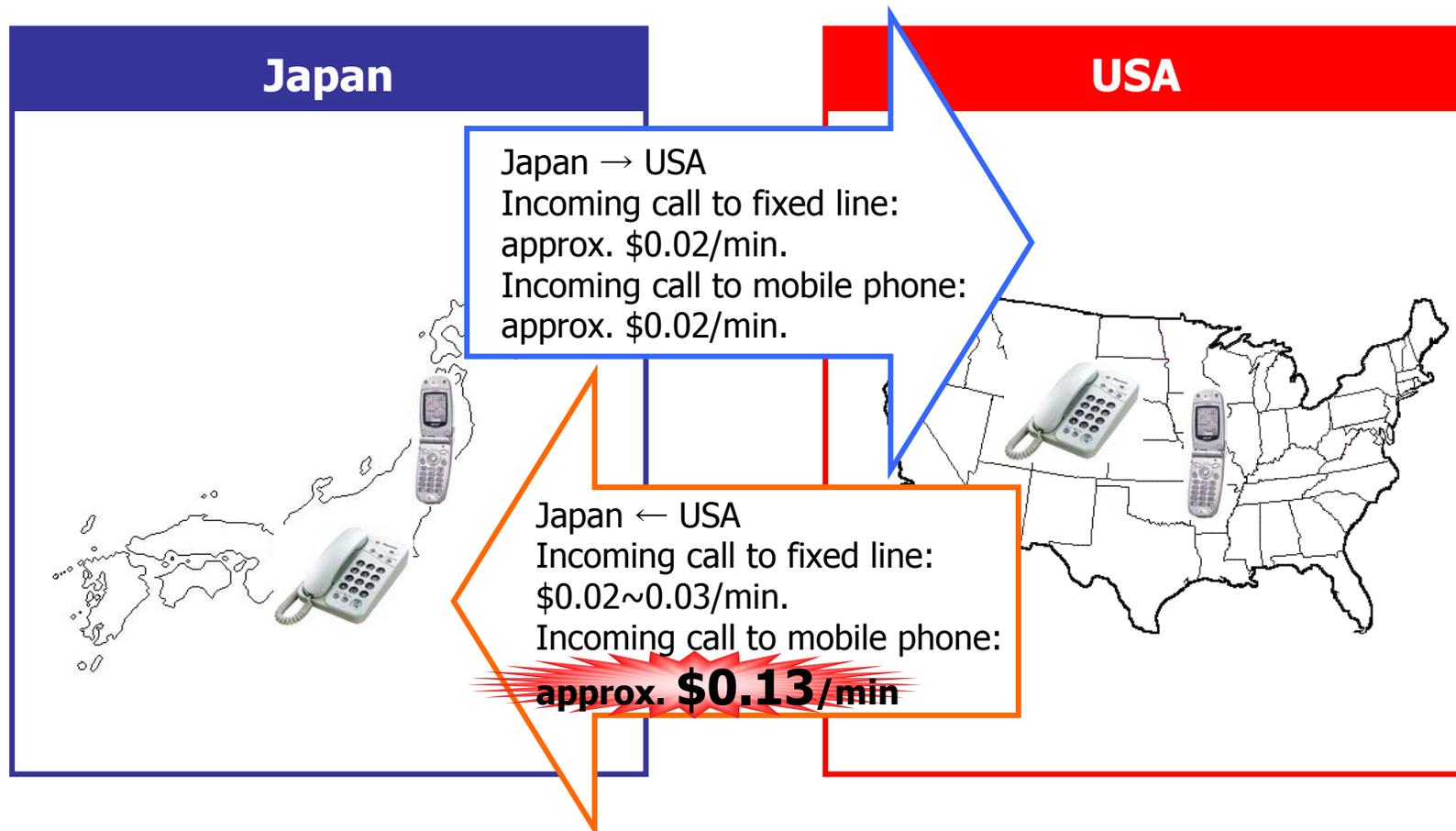
3

Termination Charges* in Japan and USA

*Inter-carrier rates



Prices for international incoming calls on mobile phones are **more than 6 times those for international incoming calls on fixed lines** since the Japanese wireless operators set a comparatively high price.



Source: Interview with one Japanese company and two foreign-affiliated companies in Japan

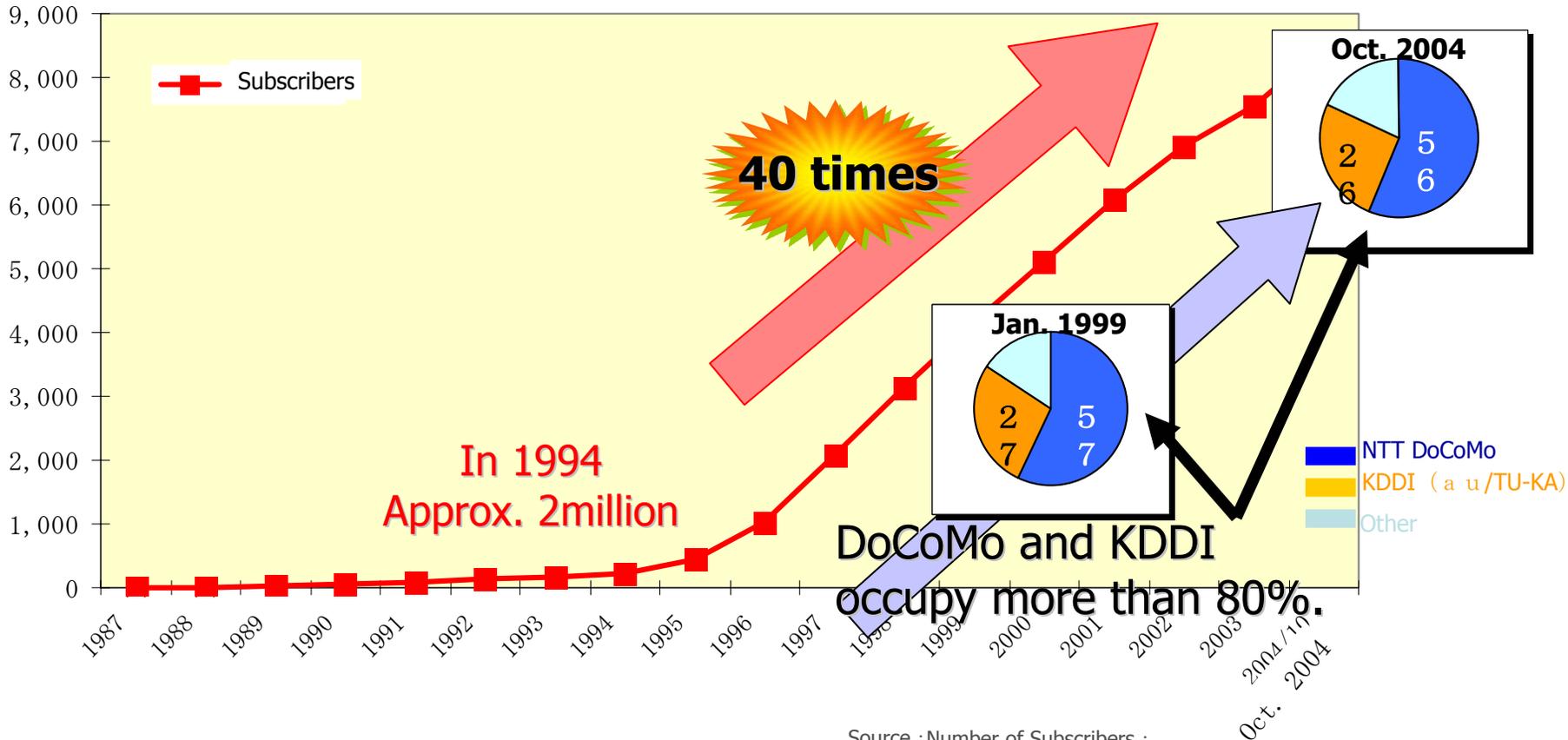
EXHIBIT 2

Number of Mobile Phone Subscribers and Market Share



■ Number of Mobile Phone Subscribers

In 2004
More than 80million



■ Market Share according to Wireless Operators

Source : Number of Subscribers :
 Electrical Communication Technical Council Formal Reply 1996-81
 : Market share is calculated using TCA's data, the number of subscribers is according to wireless operator

EXHIBIT 3

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

October 14, 2004

President George Bush and Prime Minister Junichiro Koizumi established the U.S.-Japan Regulatory Reform and Competition Policy Initiative (Regulatory Reform Initiative) in 2001 to promote economic growth and open markets by focusing on sectoral and cross-sectoral issues related to regulatory reform and competition policy. Now in its fourth year, the Initiative continues to play a central role in further strengthening the trade and economic ties between the United States and Japan.

The United States has been a strong supporter of Prime Minister Koizumi's bold economic reform agenda and welcomes the recent economic growth in Japan that agenda has helped to foster. The United States also welcomes Japan's continuing efforts to achieve meaningful economic reform, reaffirmed in Prime Minister Koizumi's October 12, 2004 statement to the Diet that "there can be no rebirth and development for Japan without structural reforms." Furthermore, the United States applauds Japan's decision to renew and strengthen the mandate of the Council for the Promotion of Regulatory Reform, which has been a strong and vocal advocate of wide-ranging regulatory and structural reform.

The recommendations included in this year's submission place an emphasis on reform measures pertaining to key sectors and cross-cutting areas and are meant to support the growth Japan is currently enjoying and to further open the Japanese marketplace. Furthermore, the United States has made a concerted effort to focus on issues that Prime Minister Koizumi and his Administration have identified as important areas for reform, such as telecommunications, information technologies, medical, energy, and competition policy.

In this year's recommendations, the United States has placed a special focus on privatization in Japan, which has taken on increased momentum now that plans to privatize Japan Post are going forward. Central to the United States' recommendations in this regard is the principle that privatization of Japan Post should be both ambitious and market-oriented if it is to achieve maximum economic benefits for the Japanese economy.

The United States continues to support Japan's Special Zones for Structural Reform initiative, which represents an innovative approach to promoting growth through structural reform and deregulation at the local level. The United States also welcomes recent efforts to strengthen Japan's Antimonopoly Act, urges in these recommendations the early enactment of the measures now under consideration to accomplish this, and encourages Japan to steadily improve its antimonopoly enforcement system. In addition, the United States is including for the first time proposed steps to help address the growing number of regulatory impediments in the agricultural sector.

The proposals included in the Summary of Recommendations and the Annex are being provided to the Government of Japan to serve as the basis for discussions over the coming year in the

High-level Officials Group and the Working Groups established under the Regulatory Reform Initiative. These Groups will in turn develop a fourth annual report to the President and Prime Minister specifying the progress made under this Initiative, including reform measures to be taken by each Government.

During the first three years of this Initiative, private-sector representatives periodically joined the Working Groups to provide valuable expertise, observations, and recommendations on a wide range of issues. The United States looks forward to working with Japan in the coming months to continue to actively integrate the private sector in this Initiative.

The Government of the United States is pleased to present these reform recommendations to the Japanese Government and looks forward to receiving Japan's reform proposals to the United States.

TELECOMMUNICATIONS

The competitive environment in important parts of Japan's telecom sector has dramatically evolved over the past several years as the Japanese Government's efforts to promote policy and regulatory reform have begun to yield positive results. This is evident in the roll-out of numerous innovative technologies and competitively-priced advanced services, including Digital Subscriber Line, Fiber-to-the-Home, and Voice Over Internet Protocol. Revisions to the Telecommunications Business Law (TBL), which came into effect from April 2004, also improved the competitive conditions for this sector.

While requirements for competitive carriers have been eased significantly, the United States believes that the Ministry of Internal Affairs and Communications (MIC) should redouble its efforts to strengthen dominant carrier regulation and competitive safeguards. Without such steps, it remains difficult for competing carriers (both domestic and foreign-invested) to offer attractive alternatives to NTT's regional carriers and mobile operator. Furthermore, greater transparency and accountability is needed to ensure that decisions do not unfairly skew the regulations in favor of the incumbents. MIC could also greatly improve the competitive environment through a more transparent and pro-competitive approach to advanced wireless services, particularly relating to spectrum, in both licensed and license-exempt areas.

Building on the progress achieved in the previous year, the United States suggests that the Telecommunications Working Group continue to invite experts from government and the private sector to provide their perspectives on new and mutually important issues. In addition, the United States recommends that Japan implement the following reforms:

SUMMARY OF RECOMMENDATIONS

- **Regulatory Independence:** Take steps to transfer regulatory functions to an independent agency not under ministerial authority, and end MIC's control over NTT's business decisions.
- **Mobile Termination Rates:** Investigate if rates for termination to the NTT DoCoMo network are set at reasonable, competitive levels, and ensure competitive neutrality in retail rate setting.
- **Transparency and Accountability:** Increase public participation in MIC's regulatory and policy decisions, and adopt measures to facilitate reconsideration and judicial review of regulatory decisions.
- **Spectrum Policy:** Ensure that Japan's spectrum management policies and practices (such as licensing, allocation, testing, and fees) are more transparently administered, promote greater innovation, competition, and efficient spectrum use (in both the licensed and license-exempt areas), and adhere to technology-neutral principles.
- **Strengthening of Competition Safeguards:** Bolster dominant carrier safeguards to prevent abuses by carriers with market power.
- **Equipment Certification:** Conclude a Mutual Recognition Agreement between the United States and Japan that would facilitate more efficient trade in telecommunications products.
- **Wireline Interconnection:** Address structural flaws in the 2003-2004 interconnection rate methodology, with the aim of encouraging cost-oriented and reasonable interconnection rates that promote efficient competition.

TELECOMMUNICATIONS

I. Strengthening Regulatory Independence and Promoting Greater Transparency.

The Ministry of Internal Affairs and Communications (MIC) has long had difficulty shielding the regulatory decision-making process from partisan influences. Previous decisions that have benefitted larger companies with histories of government ties, at the expense of new entrants, underscore the critical need for measures to bolster regulatory independence and accountability.

A. To foster regulatory independence the United States urges Japan to:

1. Develop a plan for moving regulatory functions from the purview of a ministerial agency subject to direct political control to a fully independent organization;
2. Eliminate any requirement that the Japanese Government own a specified amount of NTT shares and that foreign shareholding or a management role be restricted;
3. Eliminate ministerial interference in management operations of NTT, including business plans and personnel decisions;
4. Establish and exercise meaningful sanction authority by the regulator (imposition of fines, payments of damages, license restrictions) to punish anti-competitive behavior; and
5. Take interim steps towards achieving these goals that would include:
 - a. Implementing measures to strengthen the operation, effectiveness, and purview of Japan's Dispute Resolution Commission, including steps to maximize transparency in dispute settlement actions; and
 - b. Instituting clear firewalls between industrial promotion and regulatory oversight, to ensure that specific companies benefiting from MIC industrial promotion programs are not granted privileged regulatory treatment.

B. To foster greater regulatory accountability, the United States urges Japan to take concrete steps to facilitate reconsideration and judicial review of regulatory decisions, and ensure that the regulator and the courts have the resources to address such issues effectively within a reasonable time frame. Specifically, this should include:

1. Adopting and publishing transparent procedures to ensure that a full, public record supporting decisions and determinations is available, and

that special interests are not accorded privileged access to the regulatory process; and

2. Opening the selection process for MIC-sponsored study groups such that any interested stakeholders are given the opportunity to participate.

II. Network Access and Promotion of Competition. With the revision of the Telecommunications Business Law in April 2004, Japan achieved significant progress in deregulating competitive carriers. Competitors' access to bottleneck facilities, however, remains essential to promote both facilities-based and service-based competition, which are key Japanese Government goals. MIC can take further steps to ensure competition in the telecommunication sector by strengthening dominant carrier regulation, reducing interconnection rates for wireline services, and other measures that improve the competitive environment.

A. Dominant Carrier Regulation and Competition Safeguards. The United States recommends that Japan ensure that regulations and ministerial ordinances under the revised Telecommunications Business Law retain obligations specific to carriers with a dominant position in Japan's market and give the appropriate entity the authority to enforce these obligations. In particular, the United States urges Japan to:

1. Identify by March 2005 all markets and sub-markets for review of market power and appropriate remedies and establish an accelerated schedule for all such reviews, taking into account relevant experience of policy makers and regulators in other markets, such as in the EU;
2. Ensure in law and/or regulation that access to poles, ducts, conduits, and rights of way is non-discriminatory and cost-based, and provide transparent pricing methodology for such access;
3. Establish methods for evaluating pricing abuses by dominant suppliers (e.g. imputation tests) for voice as well as data services;
4. In the annual review of whether NTT East and West are complying with the parameters governing expansion into new lines of businesses, publish quantitative data relating to network access and treatment accorded competitors;
5. Institute transparent means, based on information to be made publicly available, for evaluating whether NTT East and West leased lines used by competitors are offered at reasonable, competitive rates;
6. Consider rules (e.g. separate affiliate transaction rules) to ensure that a dominant supplier does not use revenues from a regulated service to subsidize a non-regulated service in an anti-competitive manner;

7. Develop competition-related performance metrics, including reporting requirements, and financial penalties for missing such metrics. Such metrics should ensure that a dominant carrier treats competitors no less favorably than it treats itself or its affiliates in matters such as provisioning, quality of service, and repair and maintenance of all network services and facilities needed by competitors; and
8. Ensure that dominant carriers seeking to expand the scope of their services outside their traditional monopoly services be subject to appropriate safeguards to ensure that dominant position in one market is not leveraged with anti-competitive effects.

B. Wireline Interconnection. In July 2004, the Information and Communication Council released for public comment a proposal for restructuring the interconnection rate model (known as Long-Run Incremental Cost, or LRIC), which would be applicable for three years starting in FY2005. The United States welcomes the proposal as a step in the right direction towards reducing interconnection rates to acceptable levels, and looks forward to the release of the revised proposal in October 2004, which should reflect the comments received from various stakeholders. The United States urges MIC to take into serious consideration the following recommendations as it drafts the ordinances to implement the revised model:

1. *Elimination of NTS Costs*. The United States urges Japan to eliminate non-traffic sensitive (NTS) costs from the metered interconnection rates from FY2005, without a phase-out period.
2. *Review of NTT's Basic Charge*. Given the decision of NTT's two regional carriers to reduce their basic monthly charge by up to 490 yen, MIC should require NTT East and West to document, in a transparent, publicly verifiable manner:
 - a. Precisely which costs are currently recovered from monthly subscriber line charges;
 - b. Why recent basic monthly charge reductions on retail services, combined with wholesale (interconnection) rate increases are not predatory or exclusionary;
 - c. Why wholesale monthly charges (dry copper) ought not be reduced proportionately to retail rate reductions;
 - d. How costs associated with basic monthly charges are identified and allocated between different services (e.g. ISDN, DSL, leased lines etc.); and

- e. The assumptions behind basic line cost recovery, including *inter alia* cost recovery already achieved through initial subscriber line charges (*kanyu kenri* or *shisetsu secchi futankin*), depreciation rates and methodologies used, and allowable profit margins.
3. *Elimination of Subsidy Between NTT East and West.* The United States urges Japan to:
- a. 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 methods to prevent) anti-competitive price squeezes; and
 - b. Eliminate the current use of interconnection revenue as a source of cross-subsidization between NTT East and West, and require that any such subsidies, if demonstrated to be necessary, be paid out of a competitively-neutral universal service fund.
4. *Adapting to New Market Conditions.* As the structure of Japan's wireline communications sector continues to undergo significant changes brought on by competition and innovation, the United States urges Japan to:
- a. Consider transitioning to a bill-and-keep cost-recovery mechanism for as broad as possible a range of network access functions; and
 - b. Ensure that carriers can request assistance from the Telecommunications Business Dispute Settlement Commission to resolve disputes regarding negotiated interconnection for voice calls carried between analog systems and IP-based networks, as well as between carriers providing IP-based voice telephony, taking into account the market power of dominant carriers.
- C. Mobile Termination Rates. The United States urges Japan to:
- 1. In accordance with Japan's Telecommunications Business Law and Japan's 2002 commitment to ensure competitive interconnection rates for dominant wireless networks, institute an objective and transparent means for evaluating whether mobile wireless termination rates are set at cost-oriented levels, and to provide a basis for arbitration if commercial negotiations fail;
 - 2. For wireline carriers seeking to interconnect with mobile operators, institute competitive neutrality by eliminating the default right of mobile carriers setting the retail rate; and

3. In addition to analyzing NTT DoCoMo's dominant position in the mobile sector, analyze the degree to which all mobile carriers exert market power in the sub market for call termination.

D. Promotion of Competition in the Mobile Sector. Given the high degree of concentration in Japan's mobile market, and high consumer prices, the United States urges Japan to consider expanding opportunities for additional mobile operators to enter this market, including in the 2010 and 800 MHz bands. Where incumbent operators are underutilizing spectrum, or are in the process of moving subscribers to new services in different spectrum, MIC should consider re-allocating older spectrum to other operators on a technology-neutral basis.

E. Deregulation of Digging Regulations. Institute a review of all digging regulations, based on a public comment process, with a view to identifying which rules can be relaxed or eliminated to help reduce the cost and time involved in installing new telecommunications infrastructure.

F. Unbundling. Prior to eliminating any unbundling requirements, conduct a market review based on competition policy principles, incorporating public comments, to evaluate relevant instances of market power and bottleneck control.

G. Non-Discrimination in Service Quality. For facilities where unbundling is required, the United States urges Japan to require NTT East and West to:

1. Include among their interconnection terms and conditions a service level agreement (SLA) similar to those offered to retail customers, specifying the period within which NTT East and West must respond to a disruption or deterioration of service; and

2. Permit wholesale customers the option of maintaining facilities themselves, subject to reasonable access to such facilities.

III. Measures to Promote Advanced Wireless Technologies and Services. In its 2004 White Paper, "Building a Ubiquitous Society That Spreads Throughout the World," MIC described how broadband and wireless technologies are converging in Japan to create "ubiquitous networks that allow anyone to connect to networks at anytime from anywhere and exchange information freely." Furthermore, in August 2004, MIC announced that its FY2005 ICT policy will focus on the "u-Japan" paradigm. Consistent with these goals, the United States recommends that Japan adopt more flexible approaches to spectrum regulation in order to promote innovation, competition, transparency, and efficient spectrum use. Specific recommendations include:

A. Flexible Use of Licensed Spectrum. To encourage more efficient and innovative use of spectrum, the United States recommends that Japan:

1. Take steps to facilitate the ability of licensed operators to lease, sub-lease, and exchange spectrum with other service providers; and
 2. 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.
- B. Spectrum Allocation For New Technology. The United States urges Japan to
1. Begin identifying and allocating spectrum that can be used for innovative wireless LAN technologies, fixed and mobile MAN services and other non-standardized technologies; and
 2. Consider, where feasible, making spectrum available for such technologies on an unlicensed or “license-exempt” basis.
- C. Testing Procedures For New Technologies. Review procedures for obtaining test licenses with a view to streamlining the process, making it more transparent, and establish procedural safeguards that prevent incumbent companies from hindering the testing of competing technologies.
- D. Spectrum User Fee System. As MIC reviews the proposal by the Study Group on Policies Concerning the Effective Radio Spectrum Use, and finalizes its decision, the United States urges MIC to:
1. Refrain from imposing user fees on license-exempt devices and services; and
 2. Refrain from introducing new forms of spectrum exclusivity for license-exempt devices until non-exclusivity options have been thoroughly and transparently examined.
- E. Spectrum Use by Unlicensed Low-Power Devices. The United States urges the Japanese Government to ensure a timely, objective, and transparent process for the deliberation of regulatory changes in FY2004 and thereafter that would allow use of spectrum on license-exempt basis for low-power RFID devices, taking into consideration interests of existing users in the relevant bands.
- F. Private Sector Input. The United States looks forward to enhancing the Telecommunications Working Group dialogue by inviting experts from government and the private sector as guest speakers to share their views.

IV. Promotion of Trade in Telecommunications Equipment. To facilitate more efficient trade in telecommunications and IT products, both the United States and Japan have taken steps to facilitate mutual recognition of testing and certification requirements. In this spirit, the United States proposes that through the Telecommunications Working Group,

the Governments of the United States and Japan conclude a Mutual Recognition Agreement (MRA) for requirements relating to telecommunications equipment specifically, and electro-magnetic compatibility (EMC) generally by the end of FY2004.

EXHIBIT 4



EUROPEAN COMMISSION

EU Priority Proposals
for Regulatory Reform in Japan

28 October 2004

INTRODUCTION

The Regulatory Reform Dialogue is now ten years old. Over that period, and particularly in recent years, it has proved its worth as a systematic, but, non-confrontational way to address problem issues for our business community in doing business in Japan. Four important, but, non-exhaustive examples of progress to which the Dialogue has contributed in the Japanese market are the sharp reduction in the approval time for drugs and the rationalisation of the approval system; the legislative amendment allowing for free association between EU and Japanese lawyers; the continued strengthening of the capacities and activity of the Japan Fair Trade Commission; the general acceptance of international standards. Bearing in mind that the dialogue is a two-way process, fields where the EU has responded to Japanese requests include driving licences, data protection and implementation of the Community Patent System.

As well as being effective, the dialogue has been progressively made more efficient through a stricter prioritisation of issues, while remaining comprehensive through the use of priority and supplementary proposals. A closer association of the Member States with the Dialogue, a sustained commitment from the Commission services and strong efforts by the Japanese authorities to ensure participation by all the ministries and agencies concerned have together contributed towards this successful development. In fact, the EU/Japan Summit in June 2004 underlined the value of the Dialogue and recommended it be further streamlined.

Thus, the European Union once again thanks the Government of Japan for the opportunity to make a contribution, through the EU-Japan Regulatory Reform Dialogue, to Japan's rolling programme of regulatory reform. The EU hopes that its input will serve as a point of reference for the recommendations of the Council for the Promotion of Regulatory Reform (CPRR) expected at the end of this year, and that the Government of Japan will be able to take up as many as possible of the EU's proposals.

Despite the progress made to date, continued advance in regulatory reform in Japan is indispensable for a number of reasons.

A first important reason relates to the health of the Japanese economy itself. It is clear from the GDP statistics for recent quarters that Japan is pulling out of a long period of below potential growth and is moving into a phase of sustained expansion. Policies to promote a competitive market environment across a whole range of sectors, for instance financial services and transport, will be essential to help Japanese companies make the technical, financial and business adjustments necessary to support a sustained recovery and also to create better opportunities for the Japanese consumer in terms of range of choice of price and quality against a background of slow growth in household income.

Another reason for keeping up efforts in regulatory reform is the need to create an environment more conducive to investment and the growth of new businesses. This is true both for Japanese firms and for investors from the EU. The rate of new company start-ups in Japan, 3.8% in 2003, is still very low compared with other OECD countries.

The EU has warmly welcomed the new policy of the Japanese Government to increase substantially the amount of foreign direct investment in Japan. As a practical means of achieving this objective, Japan and the EU have agreed at the June 2004 summit an Investment Framework which will be implemented, inter-alia, through

mainstreaming investment related issues in the Regulatory Reform Dialogue – issues like predictability of administrative decision making affecting investment projects, improving flexibility in compensation for mergers and acquisitions and acceptance of test data.

The EU proposals are set out below. The EU would however, like to signal in this introduction three particular concerns.

First is the importance of implementation of reform measures once they are announced. An important example of this is the implementation arrangements for the recent legislation allowing free association between foreign and Japanese lawyers.

Second is consolidation of the good progress made in strengthening the Japan Fair Trade Commission (JFTC). In the view of the EU it is very important to carry through the proposed amendments to the Anti-Monopoly Act which will increase considerably the powers of the JFTC to deter violations of competition rules. Commissioner Monti in a recent press article in the Nihon Keizai Shimbun has set out the detailed arguments for the adoption of these legislative amendments.

Thirdly, and finally, the EU is particularly concerned at the lack of, or relatively little, movement in two important areas – transport and sanitary and phyto-sanitary rules including on food additives. This stands in sharp contrast to the progress in other fields. Achieving advance on these issues at the forthcoming High Level Meeting would surely be to the benefit of the ordinary Japanese consumer, would encourage tourism into Japan in line with government policy and would help our shared goal of boosting investment.

As a concluding point, the EU wishes to signal its satisfaction that in the course of bilateral discussions on regulation across a wide range of sectors, both sides have begun to focus on questions related to the quality of regulation and best international regulatory practice, having in mind the need to facilitate a smooth adjustment process in our economies and to encourage the diffusion of new business techniques and technological progress into wider economic activity. This new approach has been highlighted as a way forward in the Investment Framework. Promotion of dialogues on new regulations, improving regulatory transparency in the process and a forward looking attitude to cooperation on standards and conformity assessment are specific examples of what both sides want to pursue in this regard.

Priority reform proposals:

- a. *In addition to the MLIT certification system, the EU recommends allowing a direct recognition of foreign experience by the procuring entities in the Keishin evaluation and during the qualification phase. No distinction should be made between foreign and national experience, both should be considered equally.*
- b. *The EU recommends introducing into the business evaluation system a minimum indicator for some key financial and technical abilities. The EU recommends eliminating the obligation for companies to go through the business evaluation prior to any tendering and to allow procuring entities to themselves evaluate companies' ability during each procurement procedure.*
- c. *The EU recommends eliminating the compulsory registration or replacing it with a centralised registration at MLIT, valid for all procuring entities nationwide.*
- d. *The EU recommends suppressing the current price ceiling practice or to replace it by a mechanism similar to the one applied in the EU, i.e. indicating the earmarked budget for a given contract. In any case, abnormally low priced tenders should not be automatically rejected. Instead, tenderers should be given the possibility to justify and explain the reasons for such a low price tender.*
- e. *The EU recommends allowing procuring entities to consider "equivalent" solutions which do not comply with the design or descriptive characteristics of the technical specifications, but, do demonstrably meet the requirements thereof and are fit for the purpose or needs of the procuring entities in question. The EU encourages Japan to consider innovative solutions as an alternative to rigid technical specifications.*

In this context, the EU requests Japan to introduce more flexibility in the technical requirements for green procurement and accept "equivalent" production solutions instead of describing manufacturing processes and specific content.

- f. *The EU recommends putting all the list of planned procurement during the fiscal year (which are distributed and explained by all ministries in the government procurement seminar), onto the website of MoFA / MIC for the information of companies not established in Japan and wishing to participate in public procurement.*

The EU recommends expanding the scope of this seminar to cover all infrastructure projects to be carried out during the fiscal year.

2.2. Information society

The EU notes that in 2004, Japan has started to initiate proposals for reforms in the ICT sector and in particular on interconnection, frequency allocation, as well as for the establishment of a new framework to carry out assessments of the state of competition. The EU welcomes these initiatives, but, considers that some of the proposals still need to materialise concretely before a final assessment is made since some aspects of the proposals remain a matter of concern.

Overall, the EU notes that interconnection charges in Japan are still significantly above international benchmarks. Against this background, one of the positive aspects of MIC's proposals relates to the progressive removal of non-traffic sensitive elements for the calculation of interconnection charges since it could contribute to the improvement of competitive conditions in Japan for fixed services. The removal of

NTS elements was requested by the EU last year. Nonetheless, the positive side of this would be nullified in the case where such a recovery of NTS elements would be borne by NTT's competitors.

On the proposed basic policy of September 2004 to conduct an assessment of the State of competition in the Telecommunications sector, the EU considers that it is a first important step to address its long standing request with a view to improve transparency and predictability of both rules and procedures in order to remedy anti-competitive situations. Nonetheless, the final outcome of the proposed framework remains to be clarified on the aspect of the relationships between political measures, the state of competition in a relevant market and business policies to remedy anti-competitive situations effectively. The adequacy and the efficiency of such a proposed framework will be benchmarked against its effective enforcement to maintain a level playing field in the Japanese telecommunications market.

On the management of frequency spectrum, the EU understands that the proposed changes are necessary follow up of the adoption of the new Radio Law last May. Nonetheless, some aspects of the newly proposed system for frequency allocation still remain to be clarified. The EU also shares the view that the present system of fees in Japan is outdated and is counterproductive in encouraging efficient spectrum usage. The EU will closely monitor the proposed developments in these fields.

More controversial, are the proposals based on the Frequency Reorganization Plan announced by MIC in October 2003 to raise the level of performance from the 2nd Generation to the 3rd Generation mobile communication system (IMT 2000) in the 800 MHz band. If as stated, the objective is to ensure compatibility with other countries, the proposal should consider multiple options for the assignment of spectrum instead of focusing only on the 800 MHz band. This point is explicitly recognised but no corresponding proposal has been made. The need to upgrade mobile communications systems from 2G to 3G is clear, but additional frequency spectrum should be based on future requirements expressed by all 3G operators. Therefore, frequency allocation should be made on a competitively neutral basis instead of automatically re-allocating the 800MHz spectrum to DoCoMo and to KDDI. Against this background, the proposed allocation would distort competition and discriminate unfairly against other providers.

On technological neutrality, the EU considers this principle to be crucial in the current context of ICT convergence. This convergence process is driven by a rapid development of both technologies and markets, thus overcoming the need for a technology specific regulatory framework. The recent developments of IP services and TV over ADSL implying radical changes in pricing strategies for carriers as well as a new approach to the regulation of broadcasting services, are probably the best examples of this trend. Consistent with its requests made last year, the EU continues to believe that the implementation of a flexible and technologically neutral regulatory framework is the most effective way to ensure that the same rights and obligations can apply to designated carriers in all market segments in order to prevent regulatory distortions impeding market entry.

Moreover, the EU failed so far to receive evidence that the regulator is independent and not accountable to any service suppliers. The issue at stake here is a risk of an inappropriate mixing of industry promotion and regulatory oversight. Similarly, no detail is given by Japan on how the notion of joint dominance could be addressed in the regulatory framework in Japan. The EU takes note of the reply made by Japan on these aspects, but is disappointed since it falls short of bringing concrete answers on how these problems are addressed and thus prevents the EU's from lifting its regulatory reform proposals.

SDoC (Supplier's Declaration of Conformity) was introduced in the EU in 2000 in the whole market of radio and telecommunication equipment (in excess of €100b in value) after the adoption of the R&TTE Directive in 1999. As a result access to the European market for the Japanese industry was largely facilitated. The EU therefore welcomed the introduction of a new system by the Japanese Government based on Supplier's Declaration of Conformity at the beginning of 2004 which give European industry equally advantageous market access procedures on a comparable basis.

However, the EU is disappointed that this system has been limited to wired telecommunication terminals, with only a limited application to wireless/radio equipment. A continued application of type approval with the obligation to have products certified again by a third party is no longer necessary, given the development of state of the art product design and the low risks associated with Radio and Telecommunication products. Experience in the EU with the Directive confirms that such procedures nowadays are no longer necessary.

It is planned to submit to the Diet a bill that would ban sales of prepaid mobile phones. The justification of this proposal is to prevent criminals from using "anonymous" mobile phones.

The present legislation requests people purchasing prepaid mobile phones to prove their identity to the phone retailers, but it seems that enforcement of this rule has been lax. Therefore a stronger enforcement of the present rules appears to be an appropriate tool to avoid criminal use of phones and the ban of prepaid phones is not necessary to achieve such aim.

Priority reform proposals:

- a. *The telecommunications regulatory authority should be fully independent from business suppliers, impartial, and dedicated to the promotion of competition in the Japanese market. It is important that the legislative texts show clearly that the regulator is only in charge of regulation (promotion of competition, universal service, licensing ...) and does not interfere in the management of an operator. The EU therefore considers that the NTT law should be repealed since all necessary regulatory controls should be carried out on dominant suppliers or providers of universal service pursuant to the Telecom Business Law (amended accordingly) and State/Public Sector shareholder's must not be treated in the telecom sector differently from that in other sectors.*
- b. *The application of the LRIC model on interconnection should be reviewed in order to correct the misallocation of non-traffic sensitive (NTS) elements which result in higher costs for NTT-E&W's competitors. Similarly, the settlement mechanism which was established to compensate the potential losses of revenues incurred by a reduction of traffic should be abolished. Consistent with the EU's regulatory proposal made last year, the revision proposing the exclusion of NTS elements from the cost model, while basing the calculation on the most recent traffic data, is fully supported by the EU. Moreover, NTT-E&W should be required to absorb fully NTS elements and be allowed to recover its costs from retail services provided over subscriber lines in order to prevent that NTT's inefficiencies are passed on to its competitors. Such a removal of NTS elements should take place within a one year period with a view to avoid any further market distortions such as are experienced now.*
- c. *Establish a technologically neutral regulatory framework for electronic communications services so that designated carriers operating services in the*

local and/or long distance wire-line markets as well as in the wireless market should be subject where appropriate to the same rights and obligations, notably in relation to the prevention of anti-competitive conduct and interconnection. Indeed, the designation of dominant carriers should be made possible in all service markets (including the long distance wire-line market) on a technologically neutral basis. It should be based on the ability to affect terms of participation in the market and not on specific criteria set a priori. The EU considers that, the basic architecture of the current regulatory framework in Japan for the regulation of designated carriers (apart from the fixed wire-line market), is still not based on transparent, objective and non-discriminatory criteria. All tools to correct market failure should be made available by law for dominant operators in any relevant market, and the law should not a priori distinguish between technologies in that respect. Regulatory measures to correct market failures should address effectively such failures. To this end, the proposed framework for the assessment of competition remains to be clarified in regard to the aspects of the relationships between political measures, the state of competition in a relevant market and business policies to remedy anti-competitive situations effectively.

- d. The notion of joint dominance should also be recognised in Japan's regulatory framework as it is currently not so recognised in the revised TBL.*
- e. Wholesale and retail tariffs notification requirements should be maintained for carriers with significant market power and/or having control over essential facilities. The last revision of the TBL, by lifting the obligation of Type I designated carriers to file tariffs for wholesale and retail prices prevents the regulator from monitoring the pricing conduct of the dominant carriers and to ensure that they do not engage in predatory pricing behaviours. Pursuant to the new revised framework in Japan, Type I designated carriers could thus for instance discount selectively in order to damage their competitors, or enter into price squeeze strategies. The EU understands that tariff notification and accounting separation obligations will continue to apply for services categorised as "Universal Services" for all operators including non-dominant operators.*

Consistent with the principles of asymmetric regulation and proportionality, the EU considers that these obligations should be lifted for carriers which are either non-dominant or not selected as universal service providers since it impacts their ability to compete effectively against designated carriers and causes them to incur undue cost. It also involves unnecessary procedures to the detriment of a fair and effective competitive environment.

- f. Universal service should be adequately implemented, only where necessary, in order to address costs that are not covered by normal commercial practice. The objective of getting uniform rates nationwide in Japan should be achieved through the establishment of a universal service fund and should, in particular, fulfil the principles of transparency, non-discrimination and competitive neutrality. The EU fully recognises that maintaining uniform rates throughout Japan is politically sensitive but considers inappropriate that this objective be achieved through the use of interconnection charges as is currently the case. The cost of providing universal service to ensure uniform rates nationwide (including in less profitable areas) should instead be based on LRIC while the benefits of providing universal service (network externalities, brand name and presence) should be fully taken into account in the computation of costs. The current averaging system between NTT-E&W is a matter for concern since it*

leads to cross-subsidies between NTT-East and NTT-West, although the two companies are structurally separated and in principle prevented from entering into such practices through the imposition of competitive safeguards to ensure an adequate separation of their accounts. As a result, interconnection charges are also no longer cost-oriented. This is in breach of the cost orientation principle as provided for in the GATS/WTO Reference Paper.

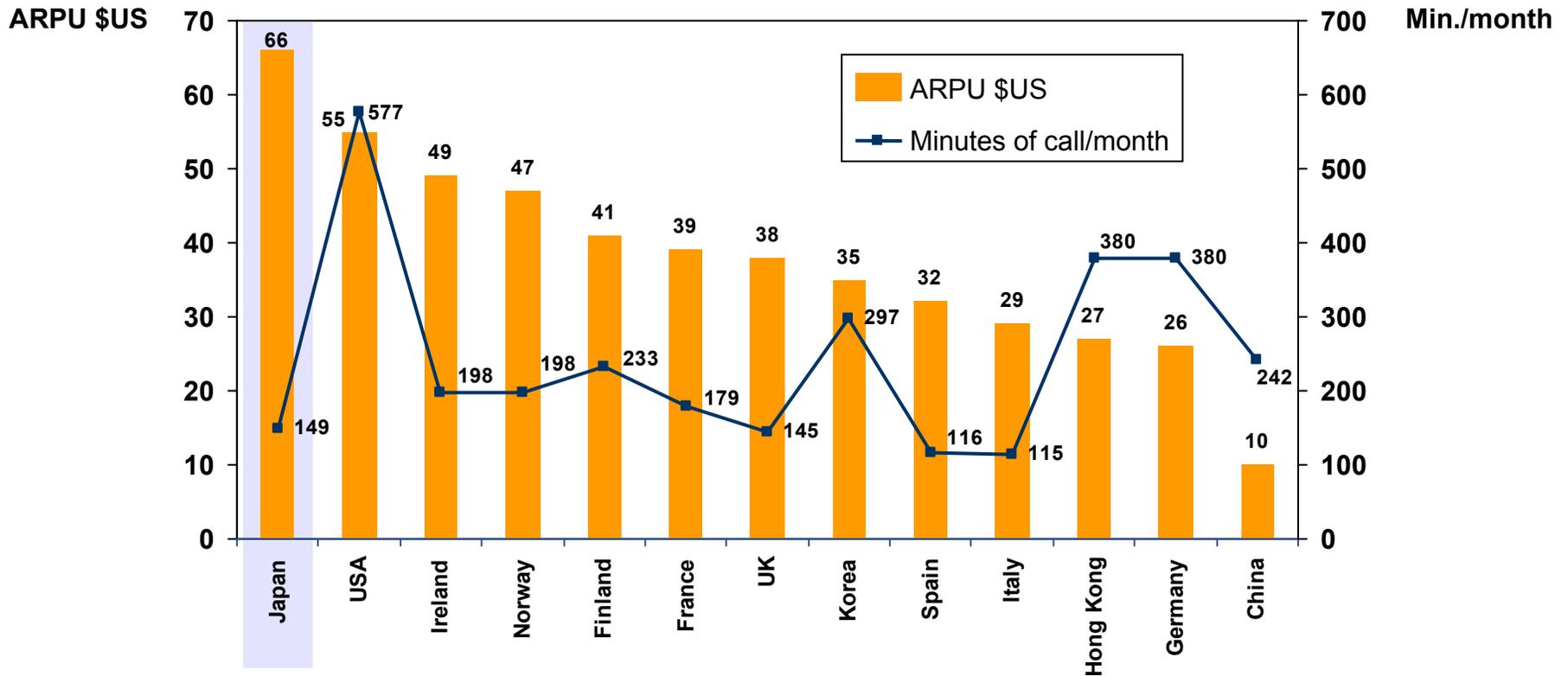
- g. Additional spectrum allocation for the additional IMT-2000 bands for 3G mobile communication systems should be made on a competitively neutral basis to prevent discrimination, and in line with agreements reached at World Radiocommunication Conferences. To this end, the proposal for future assignment of frequency spectrum should thus consider multiple options (such as 1.7 GHz) instead of focusing only on the 800 MHz. Additional frequency spectrum should be based on future requirements announced by all 3G operators. Therefore, the current proposal to re-allocate automatically the 800MHz spectrum to DoCoMo and Au KDDI should be abandoned since it would distort competition and discriminate unfairly against other providers.*
- h. In order to comply with its obligations under the TBT agreement to render market access regulations as least trade restrictive as possible, Japan should consider extending its SDoC (Supplier's Declaration of Conformity) system to all types of radio equipment as well. By doing so, Japan would set a precedent for other economies in facilitating market access for such products. This would benefit both Japanese and European manufacturers.*
- i. The EU opposes any proposal aiming at the ban of prepaid mobile phones. Such phones exist worldwide and a proper identification of the clients allows the identification of users as reliably as in the case of subscription. Also, prepaid mobile phones play a social role, since they permit the use of such devices to the lower income part of the population.*

[remaining text omitted]

EXHIBIT 5

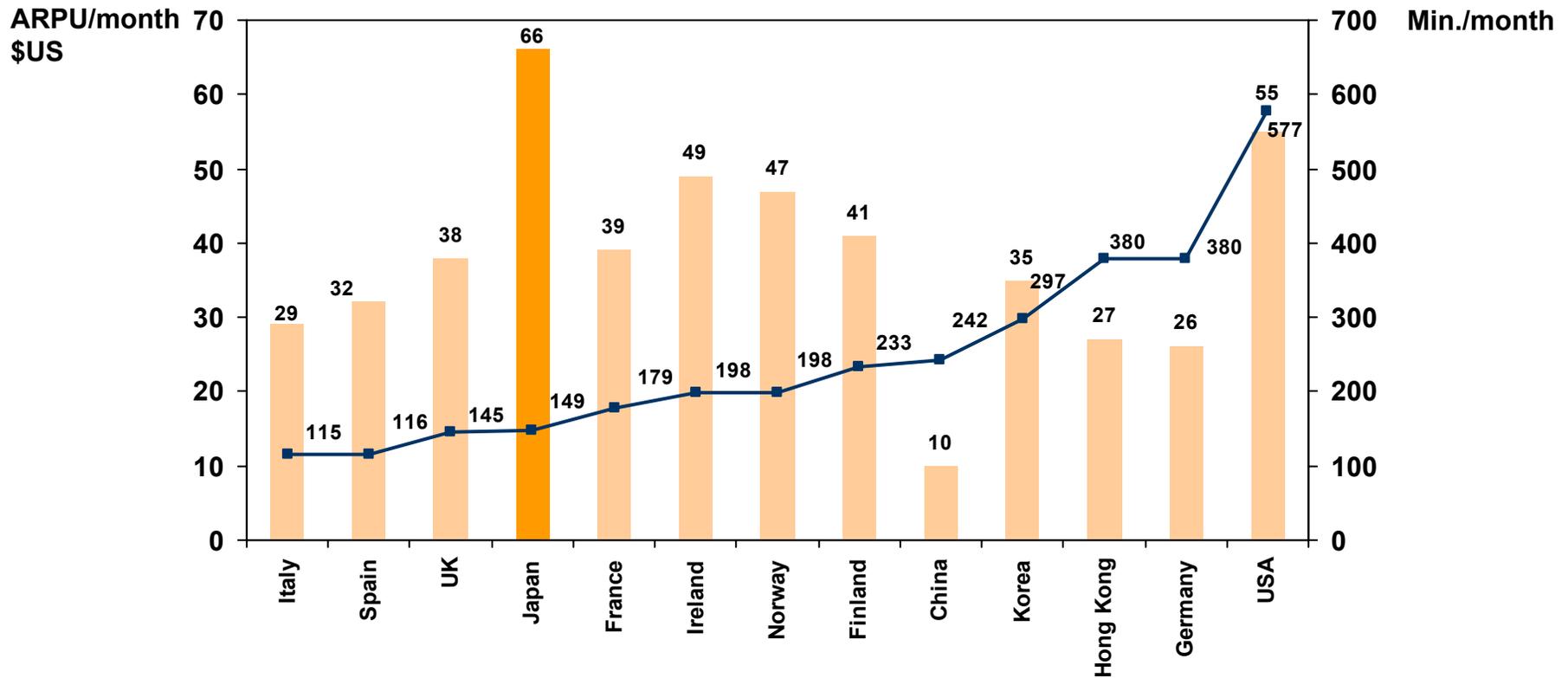
Charge Comparison with Other Countries

Despite the high ARPU in Japan (66), minutes of call per month is low.



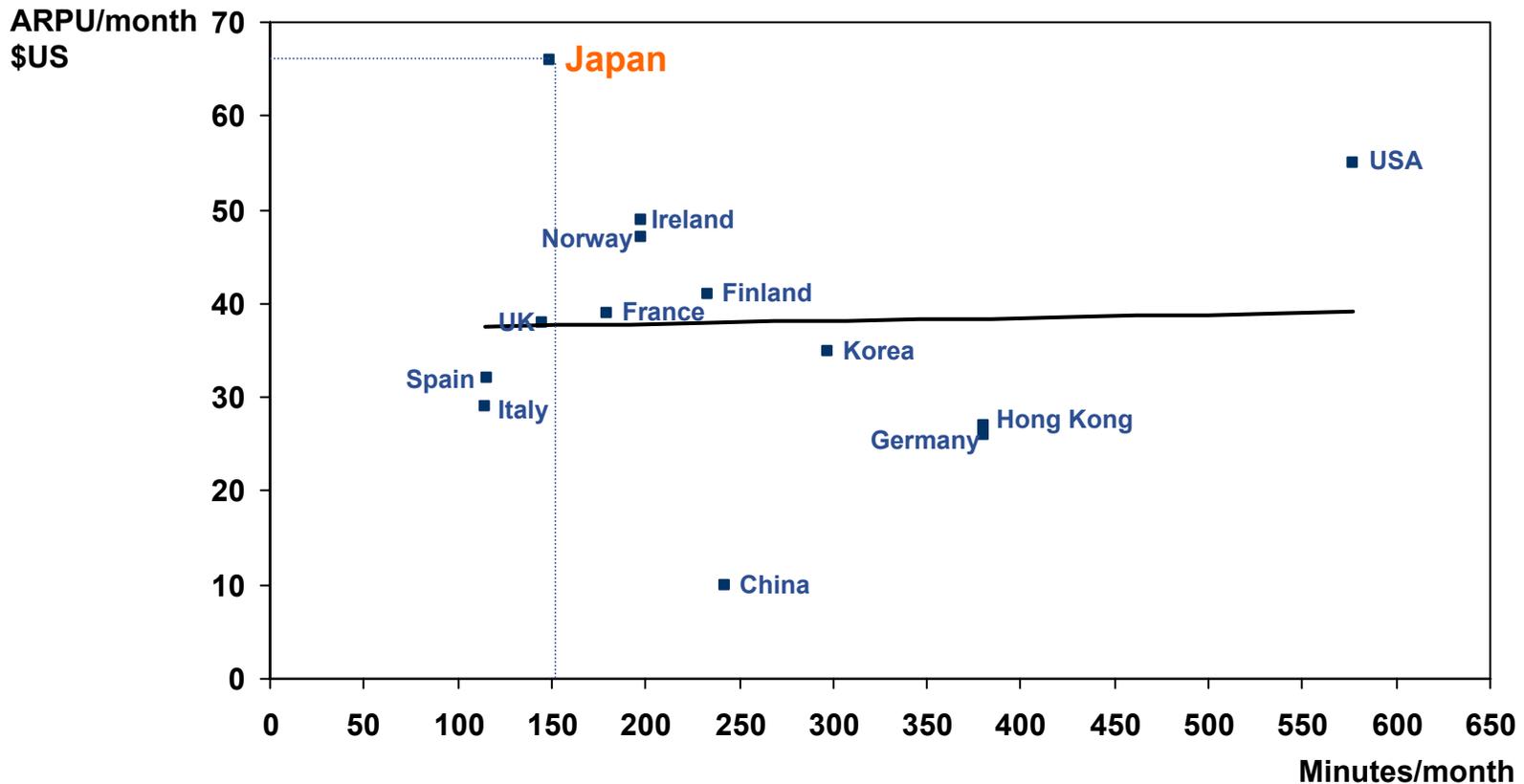
Charge Comparison with Other Countries

Despite Japan's high monthly charge, minutes per month are low.



Charge Comparison with Other Countries

Despite Japan's high monthly charge, minutes per month are low.



Charge Comparison with Other Countries

Despite Japan's high monthly charge, minutes per month are low.

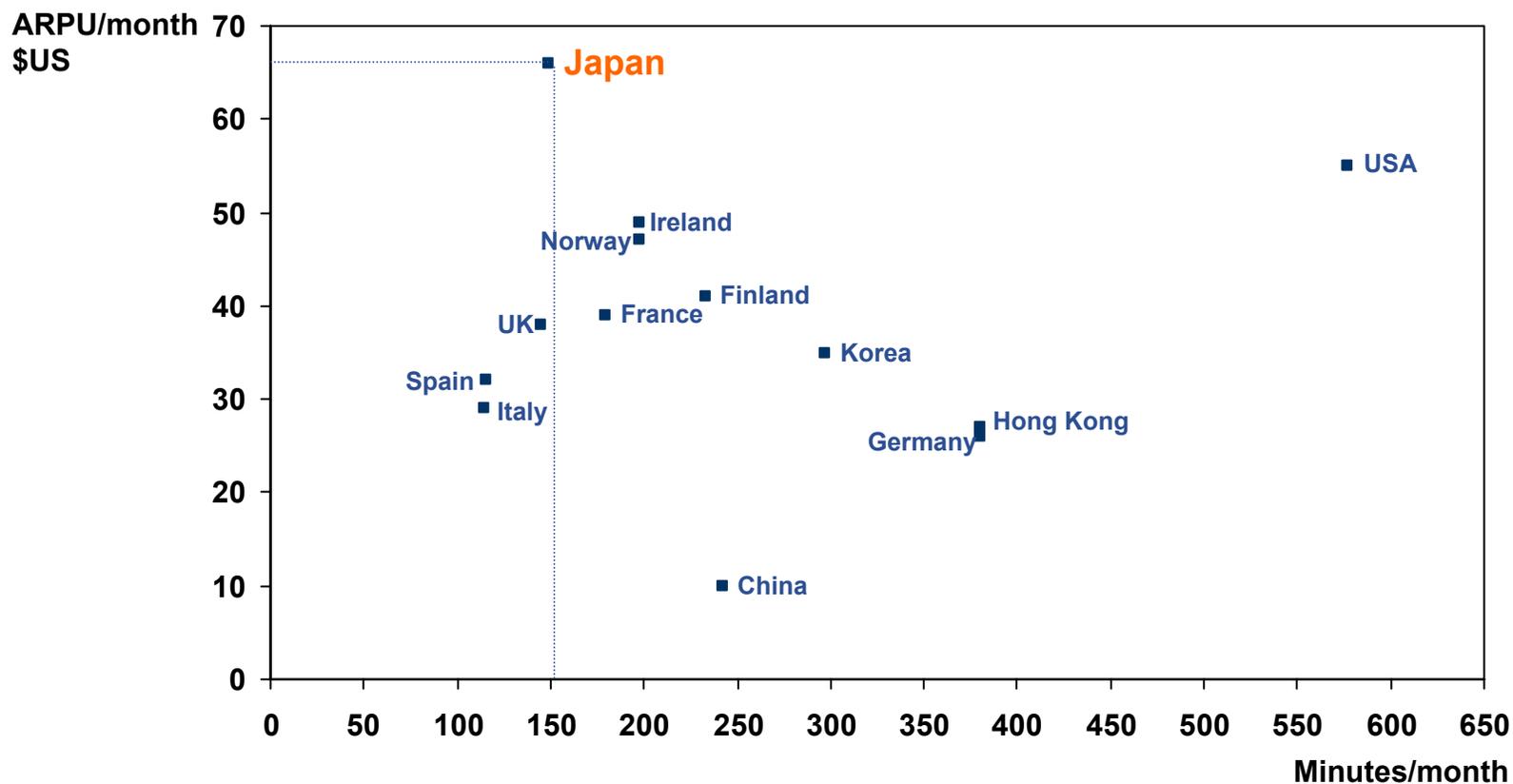
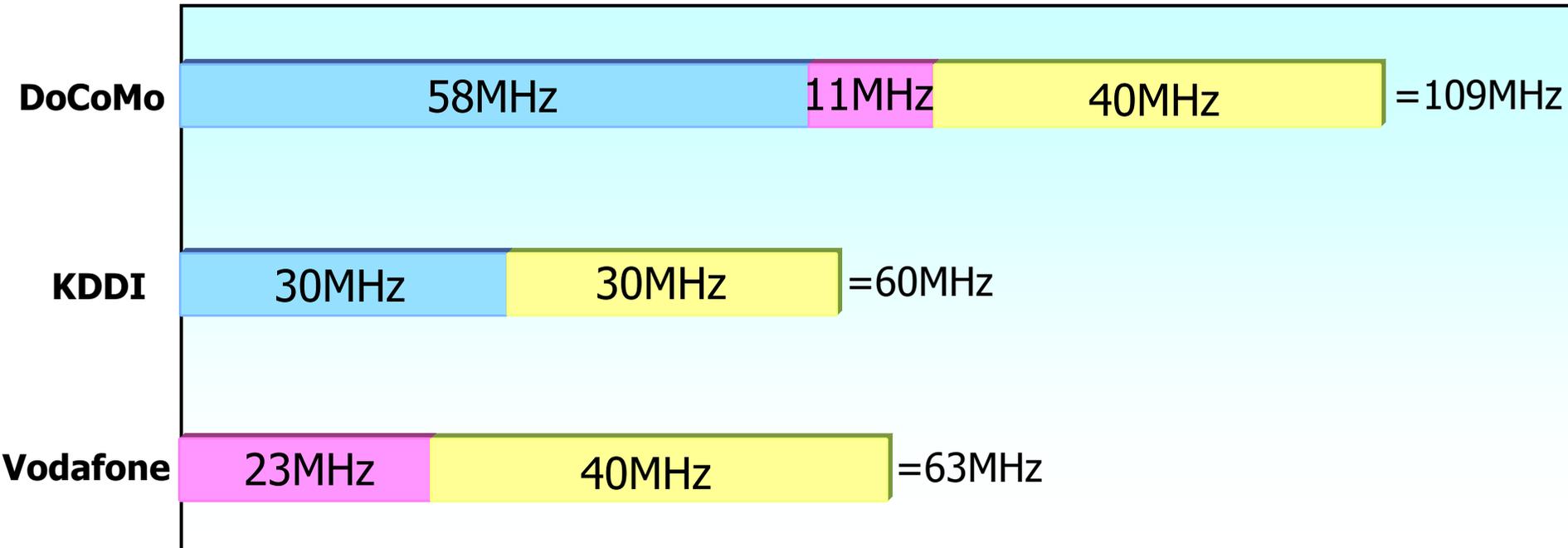


EXHIBIT 6

Licensed Frequency Bands in Japan



2004.9

800MHz 1.5GHz 2GHz

Uplink + Downlink

EXHIBIT 7

Statement of

Gregory L. Rosston

I have been retained by Softbank to provide economic analysis of Japanese mobile telecommunications and of regulatory conditions that affect that sector. I served as Deputy Chief Economist of the Federal Communications Commission and I am currently Deputy Director of the Stanford Institute for Economic Policy Research. My c.v. is available at www.stanford.edu/~grosston.

Japan is currently served by three mobile carriers, the largest of which has a market share of approximately 56% of all subscribers and is controlled by a holding company that is in turn 45% owned by the Japanese government. In comparison with other developed economies, mobile subscribers in Japan face high prices while making limited use of their phones, and international calls to Japanese mobile subscribers incur high charges. These conditions indicate the limited degree of competition in the supply of Japanese mobile telephone service.

In addition, the governmental processes that regulate Japanese mobile carriers lack transparency and make entry by new suppliers difficult. Spectrum allocation policies have favored existing carriers and are unlikely to lead to efficient spectrum use.

There are important opportunities for improving the performance of the mobile sector and fostering more effective competition. A more competitive Japanese mobile sector would be of benefit to U.S. as well as Japanese consumers. In my opinion, the Commission should seek further information on the performance of the mobile sector and the regulatory conditions in Japan. I have attached a set of information requests that would help the Commission determine the degree of competition for mobile termination in Japan.

Information Requests Regarding Foreign Mobile Termination Charges

These are the retail charges (#1) and carrier-to-carrier charges (#2-#12) that the FCC should obtain. “Charges” should include (and be reported separately as) charges per minute or per second, charges per call, and other financial terms that vary with the volume of traffic. After each request, an acronym is listed to show that the request asks for the same information from both the provider and customer for the carrier to carrier charges. The acronyms use the following convention:

US – United States
D – Domestic
F – Fixed
G – Gateway
I – International
M – Mobile
USM – U.S. Mobile

The charges are assigned codes in parentheses; in most cases there should be two sources for each charge – the paying carrier and the receiving carrier. The FCC should try to gather the data from both.

From each (major) U.S. carrier that transports U.S.-originated traffic to Japan:

1. The charge to a U.S. subscriber for a call to a mobile subscriber in Japan as compared to a call to a fixed-line subscriber in Japan. (USM)
2. The charge paid to the international gateway carrier in Japan for a call to a mobile subscriber in Japan, for each mobile Japanese mobile carrier. (IGM)
3. The charge paid to the international gateway carrier in Japan for a call to a fixed-line subscriber in Japan, for each fixed-line Japanese carrier. (IGF)

From the Japanese international gateway carrier:

4. The charge to the U.S. carrier for terminating its traffic to a mobile subscriber in Japan, for each mobile Japanese mobile carrier and each US carrier. (IGM)
5. The charge to the U.S. carrier for terminating its traffic to a fixed-line subscriber in Japan, for each fixed-line Japanese carrier and each US carrier. (IGF)
6. The charge paid to a Japanese mobile carrier for terminating U.S.-originated traffic, for each mobile Japanese mobile carrier. (IM)
7. The charge paid to a Japanese mobile carrier for terminating U.S.-originated traffic, for each fixed-line Japanese mobile carrier. (IF)

From each Japanese fixed-line carrier:

8. The charge to the Japanese international gateway carrier for terminating US-originated traffic to a fixed-line subscriber in Japan, for each US carrier. (IF)

Attachment to Statement of Gregory L. Rosston

9. The charge paid to the Japanese mobile carrier for terminating domestically-originated traffic to a mobile subscriber in Japan, for each Japanese fixed-line carrier. (D F-M)

From each Japanese mobile carrier:

10. The charge to the Japanese international gateway carrier for terminating US-originated traffic to a mobile subscriber in Japan, for each US carrier. (IM)
11. The charge to the Japanese fixed-line carrier for terminating domestically-originated traffic to a mobile subscriber in Japan, for each Japanese fixed-line carrier. (D F-M)
12. The charge to the Japanese mobile carrier for terminating domestically-originated traffic to mobile subscriber in Japan on a different mobile network, for each Japanese mobile carrier. (D M-M)

EXHIBIT 8



EMBASSY OF THE UNITED STATES
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U.S. Comments to Japan Ministry on Radio Spectrum Draft

Comments of the Government of the United States on the Draft Final Report from the Study Group on Policies Concerning Effective Radio Spectrum Use

August 24, 2004

The Government of the United States respectfully submits the following comments to Japan's Ministry of Public Management, Home Affairs, Posts and Telecommunications (MPHPT) in response to the July 22 study group report on the revision of the spectrum user fee system. A wide range of issues are addressed in the July 22 study group report, forming the basis of possible recommendations. These comments address two issues: (1) how spectrum usage fees relate to the efficient use of spectrum, and (2) how to fund programs relating to the management of spectrum and research and development of wireless technologies.

Spectrum Usage Fees as a Tool to Promote Efficient Use of Spectrum

Spectrum Users in the Licensed Bands.

The United States agrees with the key conclusion of the study group: commercial providers that benefit from exclusive or preferential use of spectrum should have economic incentives to use spectrum efficiently, so as not to waste a valuable public resource. Unless a cost is imposed, providers enjoying such preferences or exclusivity may have insufficient incentive to innovate and put spectrum to the most economically efficient use. They may also have an increased incentive to "warehouse" spectrum, in order to prevent rivals from acquiring it. Given the benefits increased competition would bring to both fixed and mobile sectors (where NTT companies enjoy control over 98 percent and 60 percent respectively of enduser access links), encouraging companies to use or return unused spectrum would clearly be in Japan's interest. Appropriately-designed usage fees, or other incentives (1), could contribute to this. However, setting spectrum use fees large enough to encourage greater actual spectrum use efficiency is untested in practice.

Given the broad direction given to the MPHPT by the Diet (2), in addition to incentives such as user fees, MPHPT should also consider whether a more flexible policy on the use of spectrum should be adopted to increase innovation and efficiency. There are two areas where this could be relevant. First, Japan appears in many cases to unduly restrict the services and technologies that can be used in particular bands. For example, MPHPT officials have suggested that only ITU-approved standards should be used for the services in the 2010 MHz band, despite lack of any evidence that ITU-approved technologies are superior to commercially available alternatives. Second, Japan does not appear to have clear policies or rules facilitating

- ▶ Consulates
- ▶ American Centers

licensee's ability to lease, sub-lease, or exchange licensed spectrum with other users. While a licensee may be unwilling to give up control of spectrum (even if holding it has a cost), rules facilitating the ability to lease, sub-lease or exchange spectrum could further facilitate putting available spectrum to more economic use.

Spectrum Users in the License-Exempt Bands.

The comments above refer to incentives appropriate only for users who are granted exclusivity or priority in dedicated bands. This logic does not extend to devices or users of spectrum on an unlicensed basis, which do not enjoy such privileges. Such unlicensed device users have no ability to "warehouse" spectrum since by definition the spectrum is not dedicated to particular users. Furthermore, because such spectrum tends to be intensively used, incentives to maximize efficiency are already high. Whereas exclusive or priority rights may need to be accompanied by economic incentives to promote efficiency, measures such as usage fees could have the opposite effect on unlicensed users that do not enjoy such privileges. Creating what essentially amounts to a "tax" on purchasing unlicensed devices would lower demand, thus resulting in less spectrum usage and reduced efficiencies. Given the low regulatory burden involved in the license-exempt sector (i.e. there are no licenses to process or adjudicate nor records to keep, and other expenses can be recouped by an equipment certification fee) "spectrum management" is not a convincing rationale for imposing a usage fee. Thus, MPHPT should reject any suggestion that unlicensed users that do not enjoy exclusivity or priority should be subject to usage fees, as this would clearly be contrary to the intent of the Diet resolution.

The study group also addressed a third category of users: devices (e.g. home electronics) that would be granted exclusive use of spectrum on an unlicensed basis. While the logic of imposing a usage fee in return for such exclusivity is consistent with arguments above, this begs the question of whether such exclusivity is appropriate or whether efficiency could be better promoted by opening this spectrum up to a broader range of devices and users. Rather than grant a new category of exclusivity or priority, MPHPT should create an open proceeding to examine the needs of such proposed devices, and whether home electronics makers can design equipment that can meet quality of service goals without excluding other, possibly more efficient or socially optimal users of the spectrum

Spectrum Usage Fees for Funding R&D and Rural Development Projects

The United States believes the issue of spectrum usage fees and R&D funding should be dealt with separately: although R&D might lead to more efficient spectrum use, such an outcome is speculative and should not be used to justify an expansion of fees. Increased MPHPT-funded R&D may not necessarily promote more efficient use of the spectrum, particularly since no evidence has been presented demonstrating that current levels of MPHPT-funded R&D are insufficient; or, if deemed insufficient, are being managed in an optimal manner. Spectrum usage fee reform should be examined on its own merits, not as a vehicle to expand unjustified spending. In this light, the MPHPT may want to examine whether R&D funding it currently controls should be reallocated.

As a general matter, the United States has long been concerned that

R&D funded by MPHPT, which also manages the commercial use of spectrum and licenses operators, presents potential conflicts of interest. Given MPHPT's role in promoting specific technologies, and its practice of including technology choices in its licensing criteria, MPHPT has an incentive to favor the licensing of operators deploying technologies it has sponsored, to the possible detriment of competing technologies. If a greater percentage of the spectrum usage fees is allocated to R&D, it would be appropriate to consider whether another agency could manage such fees in a more impartial manner.

Use of spectrum usage fees as a possible source of subsidies for rural development of wireless services, deserves greater attention: Funding for innovative wireless services that could substitute for or complement inefficient services currently supplied by NTT, and would be available to any supplier in a competitively neutral manner, would appear to be a worthy goal.

Amendments to Spectrum User Fee System [Reference 2]

House of Representatives, Committee on General Affairs (April 13, 2004)

3. Because the use of the radio spectrum has changed significantly since the spectrum user fee system was established, and considering the increased use of radio spectrum and the trends in how it is used, a decision about how to handle radio usage fees needs to be made in the near future, including new procedures for levying these fees that take account of the economic value of the radio spectrum.
4. To alleviate the pressure on radio spectrum resources, measures that lead to efficient use of radio spectrum are required. These should not be limited just to reallocation of radio spectrum but should also include development of technology aimed at opening up currently unused bands.

House of Councilor, Committee on General Affairs (May 11, 2004)

4. Because the use of the radio spectrum has changed significantly since the spectrum user fee system was established, and considering the increased use of radio spectrum and the trends in how it is used, a decision about how to handle radio usage fees needs to be made in the near future, including new procedures for levying these fees that take account of the economic value of the radio spectrum.
5. To alleviate the pressure on radio spectrum resources, take further measures towards efficient use of radio spectrum including research and development into areas such as systems able to share frequency bands and technologies for using currently unused bands.

12

1) The United States disagrees with the study-group conclusion (Section 3.2.2) that auctions are an inappropriate way to create similar incentives. Although poorly -designed auctions can have negative outcomes, many countries have successfully used them as an impartial means to allocate scarce resources and create incentives for its productive use. MPHPT has so far failed to develop an alternative method for assigning licensed spectrum among competing users that satisfies standards of objectivity and impartiality

2) "Measures that lead to efficient use of spectrum are required ... [including] development of technology aimed at opening up currently unused bands ..." (Reference Document Number 2)

EXHIBIT 9



EMBASSY OF THE UNITED STATES
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U.S. Comments on Administrative Procedures to Japan Ministry

Comments of the Government of the United States to the Ministry of Public Management, Home Affairs, Post and Telecommunications on the Issues with Regard to Administrative Rule-making Procedures

August 23, 2004

- ▶ Consulates
- ▶ American Centers

The Government of the United States welcomes the opportunity provided by the Ministry of Public Management, Home Affairs, Post and Telecommunications (MPHPT) to comment on its Draft Issues with Regard to Administrative Rule-making Procedures, which was released on July 23, 2004. The United States commends MPHPT for seriously considering improvement of the Public Comment Procedures (PCP) and commends the Study Group on Administrative Procedure Law for its work to explore ways to improve this important component of Japan's rule-making process.

The United States has welcomed the Government of Japan's use of the PCP since its establishment in 1999. There have been problems, however, with implementation of the PCP that have worked to chip away at its worthwhile objectives of promoting transparency and a fairer and more open rule-making system. These problems include inadequate public comment periods and insufficient incorporation of seemingly appropriate comments into final regulations.

The United States provides the following specific comments on the Draft Issues with Regard to Administrative Rule-making Procedures:

1. Philosophy and Purpose of Establishing the System

The United States welcomes the Government of Japan's plan to improve transparency and ensure greater fairness in the decision-making process in the establishment, revision, and abolition of regulations by improving the PCP in FY2004. Ensuring that both the public and private sectors are able to provide input into the rule-making process helps promote good governance, remove bureaucratic impediments, and boost economic efficiency. Furthermore, effective public comment procedures can expand the range of stakeholders that participate in the rule-making process, strengthening and legitimizing the societal consensus on regulatory changes. It is therefore essential that the PCP be used in ways that allow meaningful public input, and that mechanisms are put in place to ensure the PCP is not used simply to create the appearance of meaningful input.

2. Scope of Application:

Regarding the Scope of Application, the United States recommends an inclusive approach that incorporates the full range of rule-making institutions and rule-making procedures, including but not limited to the development of draft legislation and voluntary guidelines.

Specifically regarding Scope of Application (4), the United States urges Japan to revise the PCP in ways that result in processes that are consistently applied across Ministries and Agencies. This will help to ensure transparency and predictability in the regulatory environment.

3. Public Comment Procedures:

The United States has made many recommendations to Japan over the years to improve the PCP. In its October 24, 2003 U.S.-Japan Regulatory Reform Initiative recommendations, the United States suggested that vigorous efforts be made to gather a broader range of opinions and information through the PCP when formulating, amending, or repealing a regulation by:

- Standardizing a 60-day comment period, or at a minimum requiring the use of a minimum 30-day comment period, except in urgent cases;
- Requiring that all comments received be reflected in final regulations, to the extent appropriate;
- Eliminating the practice of placing overly rigid parameters on the public comment submissions, such as substantially limiting page length, requiring an 80-character summary, and other impediments that undermine the spirit of the PCP;
- Establishing a centralized system that would allow the public to easily find solicitations of public comments (whether or not they are covered by the PCP) including those by shingikai, kenkyukai, benkyokai and other study groups; and
- Requiring that all proposed rule-making by government-established or authorized self-regulatory organizations be made available for public comment, and comments received should be seriously considered as appropriate in the final draft.

Specifically regarding PCP (2):

Announcement of the Drafts, the United States urges Japan to publicize draft regulations at the earliest possible time. By publicizing proposed drafts at early stages, all parties will have the opportunity to review and analyze proposed rules in a timely manner. Such early publication of outlines, drafts and proposed drafts will allow interested parties sufficient time to analyze complex issues and prepare a meaningful public comment submission. In addition, the United States commends Japan's use of government websites to announce public comment periods and the results.

Specifically regarding PCP (3):

Public Comment Period, roughly half of Japan's public comment periods over the last few years have been shorter than the 30-day guideline ? many have been considerably shorter than this as shown in MPHPT' s annual surveys of the PCP. Such short comment periods do not afford the public sufficient time to provide substantive comments on what are often extremely complicated issues. This is why the United States is proposing that Japan provide, as standard practice, a 60-day public comment period. Furthermore, while the United States recognizes there can be urgent circumstances requiring an expedited rule-making process, it is essential that procedures be established to compel Ministries and Agencies to program-in a sufficient comment period when developing regulatory changes. The United States therefore supports the recommendation that Ministries and Agencies should publicly state

the reasons behind a shortened public comment period when urgent circumstances require this.

Specifically regarding PCP (5):

Scope of Submitters, the United States urges Japan to demonstrate its commitment to ensuring that interested parties have an opportunity to share their views and concerns by soliciting comments from all interested parties, including foreign public and private sectors.

Specifically regarding PCP (7):

Handling of the Submitted Opinions and (8): Announcement of the Results of PCP, the United States urges Japan to give serious consideration to public comments submitted under the PCP, and to reflect those comments in final regulations where appropriate. Submitted opinions and official counter-comments should be publicized, as well as how the comments were incorporated, or if not incorporated, the reasons why. It is particularly important that the public has access to the entire text of comments submitted. Making the submitted public comments available in their entirety on the Internet, for example, is a relatively simple task, which promotes transparency.

Specifically regarding PCP (9):

Others, in cases where dramatic modifications are required after soliciting comments under the PCP, the United States recommends that a revised proposal be re-released for additional public comment.

Furthermore, in order to properly and fully take into consideration all public comments, an appropriate time between the close of the public comment period and finalization of a regulation in question is required. As a recent example of a regrettably inadequate public comment process, on June 15, 2004, the Ministry of Health, Labour, and Welfare (MLW) released for public comment draft privacy guidelines regarding how businesses handle personal information relating to employment management. Not only was the comment period a short two weeks, but also MLW issued its final guidelines less than 24 hours after the close of the comment period, without any substantive changes. Such misuse of the PCP undermines its objectives, and suggests indifference on the part of the Ministries and Agencies in addressing the public's concerns.

4. Indication of Reasons:

The United States notes that certain Ministries and Agencies (for example, MPHT's Telecommunications Bureau, the Ministry of Economy, Trade and Industry, and the Cabinet Office) have made good efforts to provide counter-comments to public comments received, which can be useful in understanding the rule-making process. The United States recommends that when the Ministries and Agencies offer counter-comments, they cite the name of the individual or entity making the original comment. This is important for context. For example, in the telecommunications sector, opinions from the dominant carrier NTT would be viewed in a different light than those of the competing carriers; likewise, a wireline carrier may take a different approach to policy issues than a wireless operator.

8. Delivery Procedures and Others:

All effective delivery options should be accepted, including personal

delivery, in writing, mail, fax, and electronically (i.e., email or Internet).

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EMBASSY OF THE UNITED STATES

EXHIBIT 10

MIC members parachuted into NTT in the past

Megumi Hirose	(bureau manager)	1990	NTT	director
Toshio Hayata	(bureau manager)	1992	NTT	executive director
Shigeo Sawada	(administrative vice-minister)	1993	NTT	director-general
Tadayuki Arai	(bureau manager)	1994	NTT	executive deputy president
Shigetoshi Takagi	(bureau manager)	1995	NTT Data	executive deputy president
Hiroumi Kanba	(bureau manager)	1997	NTT Data	auditing officer
Masayoshi Isoi	(bureau manager)	1998	NTT Data	auditing officer
Kunihito Abe	(bureau manager)	1998	NTT Docomo	director
Toyotaro Kato	(bureau manager)	1998	NTT Docomo	deputy president
Haruki Matsuno	(administrative vice-minister)	2000	NTT	executive deputy president
Kazuo Kuritanigawa	(bureau manager)	2001	NTT	auditing officer
Barri Shibagawa	(councilor)	2002	NTT Data	executive deputy president
Sei Arimura	(bureau manager)	2002	NTT Docomo	president
Youjiro Inoue	(bureau manager)	2002	NTT Docomo	director
Seiji Tanaka	(councilor)	2003	NTT Docomo	director
Seijiro Adachi	(bureau manager)	2004	NTT Docomo	executive deputy president

MIC members parachuted into KDDI in the past

Yasuzo Nakamura	(administrative vice-minister)	1998	KDDI	director-general
Yuzai Okuyama	(administrative vice-minister)	1993	KDDI	deputy director-general
Akimasa Egawa	(bureau manager)	1995	IDO	director-general
Mitsuo Igarashi	(administrative vice-minister)	2000	KDDI	director-general
Sadataku Amano	(councilor)	2004	KDDI	special consultant