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

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Federal Communications Commission
Office of Secretary

Docket No. WT 06-96

_____)
 In re Application of)
)
 Guam Cellular and Paging, Inc.,)
 Transferor and Assignee,)
)
 and)
)
 Guam Wireless Telephone Company, L.L.C.,)
 Assignor,)
)
 and)
)
 NTT DoCoMo, Inc.)
 Transferee)
)
 Application for Assignment, Transfer of)
 Control, and Petition for Declaratory Ruling)
 _____)

**APPLICATION FOR ASSIGNMENT, TRANSFER OF CONTROL,
AND PETITION FOR DECLARATORY RULING**

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SUMMARY

NTT DoCoMo, Inc. (“DoCoMo”) has entered into separate agreements with each of Guam Cellular and Paging, Inc. (“Guam Cellular”) and Guam Wireless Telephone Company, L.L.C. (“Guam Wireless”) that will give DoCoMo ultimate control of Guam Cellular and certain assets of Guam Wireless. In order to effectuate the agreements, direct control of Guam Cellular will be transferred to DoCoMo Guam Holdings, Inc. (“DoCoMo Guam”), a wholly-owned subsidiary of DoCoMo organized under the laws of Guam, and the assets of Guam Wireless will be assigned to Guam Cellular. The parties request the Federal Communications Commission (“FCC” or “Commission”) to find that the proposed transfer and assignment, which will be closed simultaneously, will serve the public interest because they will deliver substantial pro-competitive benefits for consumers that will not be offset by any anti-competitive benefits.

Guam Cellular and Guam Wireless each provide commercial mobile radio service (“CMRS”) in Guam and the Commonwealth of the Northern Mariana Islands (the “CNMI”), both of which are unincorporated territories of the United States and are classified by the Commission as rural service areas. Despite the rural nature of Guam and the CNMI, they enjoy a highly robust and competitive wireless market. Ten different entities hold CMRS licenses in Guam and the CNMI and utilize a wide variety of wireless standards (*e.g.*, CDMA, GSM, iDEN). Other Guam and CNMI mobile operators provide local fixed, long distance, international and broadband services in addition to competitive wireless services.

DoCoMo’s acquisition (through DoCoMo Guam) of Guam Cellular and the assets of Guam Wireless will promote the public interest by enhancing the competitive capabilities of the current CDMA (and eventually W-CDMA) and GSM operations through the infusion of significant additional economic and management resources and wireless expertise. These

resources will allow Guam Cellular post-transaction to compete more efficiently and effectively against multiple other mobile operators in Guam and the CNMI that also are expanding and enhancing their networks and services and that have access to significant financial resources.

DoCoMo's leadership in providing advanced wireless services in Japan will provide additional service-related benefits to Guam and CNMI consumers. DoCoMo, a corporation organized under the laws of Japan (a member of the World Trade Organization), provides mobile wireless and data communications to more than 50 million subscribers in Japan. DoCoMo is a market leader, launching the world's first 3G mobile service in 2001 and providing a wide variety of mobile multimedia services, including mobile Internet and other data services. Enhancing wireless competition through the strengthening of Guam Cellular's operations post-transaction will produce tangible benefits for consumers by increasing product choice and service quality at affordable prices.

The transaction's substantial pro-competitive benefits will not be offset by any anti-competitive effects. DoCoMo currently expects to continue operating two separate networks in Guam and the CNMI, with distinct licenses, networks, technologies, service offerings and customer bases, and to enhance the quality of Guam Wireless' GSM network by adding GPRS capability and in the future to deploy a W-CDMA network for 3G services over Guam Cellular's cellular licenses. Therefore, the proposed transaction does not raise significant subscriber transition issues near term or present a significant competitive concern regarding the reduction of mobile operators in the Guam and CNMI market. Furthermore, DoCoMo's indirectly holding of 55 MHz of CMRS spectrum in Guam and the CNMI is well below the 70 MHz threshold that the Commission has established in other wireless transactions.

Moreover, the proposed indirect foreign investment in Guam Cellular raises no competitive concerns and is consistent with Section 310(b)(4) of the Communications Act, as amended (the “Act”). DoCoMo, a publicly traded Japanese mobile operator, will hold a 100 percent ownership interest in Guam Cellular through DoCoMo Guam. Nippon Telegraph and Telephone Corporation (“NTT”), a publicly traded Japanese communications provider, holds a 61.96 direct voting and equity interest in DoCoMo. The Japanese government holds a 38.37 percent direct voting and equity ownership interest in NTT.

DoCoMo operates in a robustly competitive telecommunications market in Japan. The domestic and insular nature of the Guam and CNMI market also ensure that neither DoCoMo nor NTT can possibly leverage its market share or control of facilities in Japan to provide Guam Cellular with an unfair competitive advantage in the Guam and CNMI market. Further, the Japanese government’s ownership interest will confer no competitive advantage on Guam Cellular in the Guam and CNMI market. Neither NTT nor DoCoMo benefits from government subsidies, preferential access to capital, or favorable regulatory treatment. Accordingly, the Commission should determine that the public interest would not be served by denying approval of DoCoMo’s indirect foreign ownership of Guam Cellular pursuant to Section 310(b)(4) of the Act.

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**APPLICATION FOR ASSIGNMENT, TRANSFER OF CONTROL,
AND PETITION FOR DECLARATORY RULING**

NTT DoCoMo, Inc. (“DoCoMo”), Guam Cellular and Paging, Inc. (“Guam Cellular”), and Guam Wireless Telephone Company, L.L.C. (“Guam Wireless”) (collectively, the “Applicants”), pursuant to Sections 214 and 310(d) of the Communications Act of 1934, as amended (the “Act”),¹ request Commission consent for DoCoMo, through its wholly-owned domestic subsidiary, to acquire all ownership shares of Guam Cellular and certain wireless assets of Guam Wireless. Specifically, control of Guam Cellular would be transferred to DoCoMo Guam Holdings, Inc. (“DoCoMo Guam”), a wholly-owned subsidiary of DoCoMo organized

¹ See 47 U.S.C. §§ 214, 310(d).

under the laws of Guam, and the assets of Guam Wireless would be assigned to Guam Cellular.² Upon consummation, Guam Cellular would be the surviving licensee and would continue to hold certain Section 214 and Title III authorizations, in addition to the Section 214 and Title III authorizations now held by Guam Wireless. The Applicants also seek a declaratory ruling that upon consummation of the transaction, the public interest would not be served by denying approval of DoCoMo's indirect foreign ownership (through DoCoMo Guam) of Guam Cellular pursuant to Section 310(b)(4) of the Act.³

On March 20, 2006, DoCoMo entered into separate agreements with each of Guam Cellular and Guam Wireless that, upon consummation, will give DoCoMo ultimate control of Guam Cellular and certain assets of Guam Wireless. Guam Cellular and Guam Wireless provide commercial mobile radio service ("CMRS") in Guam and the Commonwealth of the Northern Mariana Islands (the "CNMI"), both of which are classified as rural service areas and which collectively have a population of less than 225,000 people. Currently, DoCoMo expects to retain most of the managerial officers and employees of both companies and expects to continue operating, for the time being, two separate networks in Guam and the CNMI. DoCoMo will enhance the quality of Guam Wireless' GSM network near term by adding General Packet Radio Service ("GPRS") capability and in the future expects to deploy a wideband spread-spectrum 3G mobile telecommunications air interface (W-CDMA) network for third generation ("3G") services over Guam Cellular's cellular licenses.

As set forth below, this transaction will deliver substantial pro-competitive benefits. Further, these pro-competitive benefits will not be offset by any anti-competitive effects. The

² A list of the FCC authorizations held by Guam Cellular and Guam Wireless is attached as Exhibit A.

³ See 47 U.S.C. § 310(b)(4).

transaction will enhance the existing operations of Guam Cellular and Guam Wireless, providing the resources for Guam Cellular to finance upgrades for the networks and to introduce new and innovative service offerings and products. The transaction also will help ensure that Guam Cellular can continue to compete in the robust wireless market in Guam and the CNMI. Thus, the transaction will produce tangible benefits for consumers by increasing product choice and service quality at affordable prices.

DoCoMo's foreign ownership of Guam Cellular will not impair competition or otherwise harm U.S. interests. DoCoMo, a publicly-traded Japanese mobile carrier, operates in a robustly competitive telecommunications market in Japan. At least 75 percent of DoCoMo's shares are held by investors from World Trade Organization ("WTO") member countries. At least 75 percent of the shares of Nippon Telegraph and Telephone Corporation ("NTT"), which holds a 61.96 direct voting and equity interest in DoCoMo, also are held by investors from WTO member countries. Thus, the transaction is overwhelmingly in the public interest and is fully consistent with the Act and Commission rules.

The parties are filing concurrently a series of applications to effectuate the proposed transaction. Specifically, two FCC Form 603 applications are being submitted, one which seeks Commission consent to assign Guam Wireless' PCS license to Guam Cellular (as controlled by DoCoMo Guam) and one which seeks Commission consent to transfer control of Guam Cellular to DoCoMo Guam.⁴ The parties also are filing an application seeking Commission consent to assign Guam Wireless' international Section 214 authorization to Guam Cellular (as controlled by DoCoMo Guam). In addition, the parties are filing a joint international/domestic Section 214

⁴ The technical parameters of the Commission's electronic Universal Licensing System ("ULS") require that the assignment application be filed first, followed by the transfer of control application. The transfer of control application will not, however, list the call sign of Guam Wireless' PCS license because it will be the subject of the assignment application.

application seeking Commission consent to transfer control of Guam Cellular to DoCoMo Guam.

I. DESCRIPTION OF THE APPLICANTS

A. Guam Cellular

Guam Cellular, a corporation organized under the laws of Guam, is the licensee of the cellular A block licenses in Guam and the CNMI. It also holds several other licenses, including paging, common carrier fixed point-to-point microwave, industrial/business pool, wireless communications service, and 700 MHz lower band licenses.⁵ In addition, Guam Cellular holds two international Section 214 licenses authorizing it to provide international telecommunications services on a global resale and facilities basis. Guam Cellular is owned by a group of individuals through their respective investment entities. The largest single shareholder is Lyons Community Property Trust (“Lyons Trust”), which holds a majority ownership interest in Guam Cellular. The Lyons Trust is a U.S. trust whose beneficiaries are Philip and Mary Lyons, both of whom are U.S. citizens.

Guam Cellular has provided high quality mobile wireless services, based upon the CDMA wireless standard, to residents of and visitors to Guam and the CNMI since 1992. It provides service under the brand names Guamcell Communications in Guam and Saipancell Communications in the CNMI. Guam Cellular provides a host of telecommunications and enhanced services, including mobile voice services, paging services, business and residential

⁵ Guam Cellular’s two cellular licenses have been fully constructed, and its other Title III licenses are in compliance with applicable build out requirements. Guam Cellular acquired a 700 MHz lower band license (WPYG242) less than five years ago in Auction No. 44 pursuant to the Commission’s designated entity program. DoCoMo Guam does not qualify for designated entity status. Pursuant to Section 1.2112(d) of the Commission’s rules, the appropriate percentage of the bidding credit associated with the license will be repaid shortly before the transaction closes.

wireline domestic long distance (via direct dial and calling card) and international services, and dial-up and DSL Internet access services.

Guam Cellular also is a designated “eligible telecommunications carrier” or “ETC” under the Commission’s universal service program for Guam and the CNMI. Guam Cellular was designated an ETC by the Commission for the entire area of Guam.⁶ Under Section 214(e)(6) of the Act, the qualifications for ETC status are specific to the individual ETC in the “service area” designated by the Commission, and because Guam Cellular will continue as the operating entity on Guam following the transfer of control to DoCoMo, it should retain its ETC status.

B. Guam Wireless

Guam Wireless, a limited liability company organized under the laws of the Commonwealth of Virginia, is the licensee of the PCS B block license for the Guam-Northern Mariana Islands Major Trading Area (“MTA”).⁷ Guam Wireless holds an international Section 214 license authorizing it to provide international telecommunications services on a global resale and facilities basis. The managing member of the company is John K. Wu, who is a resident of Guam and a U.S. citizen. Guam Wireless’ largest single shareholder is Benson Wu, also a resident of Guam and a U.S. citizen, who holds a 32.48 percent ownership interest in Guam Wireless. The other individuals or entities that hold a ten percent or greater direct ownership interest in Guam Wireless are Pacific Sunny (Saipan) Inc. (13.98 percent) and Kairos Fund Limited Partnership (22.35 percent), both of which are U.S. companies. Guam Wireless

⁶ See *Guam Cellular and Paging, Inc. d/b/a Guamcell Communications Petition for Designation as an Eligible Telecommunications Carrier in the Territory of Guam*, 17 FCC Rcd 1502 (2002).

⁷ The required build out notifications for the Guam Wireless’ PCS license have been approved by the Commission. See ULS File Nos. 0000174902 (five-year build out) and 0002230332 (ten-year build out). Guam Wireless’ PCS license was granted more than ten years ago and is not subject to the Commission’s rules regarding bidding credits or installment payments.

provides high quality mobile wireless services under the brand name HafaTEL to residents of and visitors to Guam and the CNMI using the GSM wireless standard.

C. DoCoMo

DoCoMo, a corporation organized under the laws of Japan, a WTO country, is a mobile communications company that provides wireless voice and data communications to more than 50 million subscribers in Japan. These services are provided by DoCoMo and eight wholly-owned regional subsidiaries.⁸ DoCoMo's wireless service area covers approximately 99 percent of Japan's population.

DoCoMo is a market leader, providing a wide variety of mobile multimedia services, including i-mode[®], a mobile Internet service that provides email and Internet access to more than 45 million subscribers, and FOMA[®], the world's first 3G mobile service that was launched in 2001 and is based on W-CDMA technology. In addition to voice services, DoCoMo offers services that include audio and video capabilities, games, data communications (*e.g.*, to receive: news, stock quotes and weather reports; mobile banking and other financial services; restaurant guides, locations, and reservations; concert and sporting event tickets; travel reservations; telephone directories; and classified ads), remote monitoring services (*e.g.*, for construction sites or daycare centers), and remote learning systems via videophones. DoCoMo's services include several advanced features that are not yet available, or of limited availability, in the United States. DoCoMo also provides wireless LAN, Wi-Fi, paging, satellite, and Personal Handyphone System ("PHS") services (a digital cordless phone system that operates on a digitalized microcell network).

⁸ DoCoMo's wholly-owned regional subsidiaries are: NTT DoCoMo Hokkaido, Inc.; NTT DoCoMo Tohoku, Inc.; NTT DoCoMo Tokai, Inc.; NTT DoCoMo Hokuriku, Inc.; NTT DoCoMo Kansai, Inc.; NTT DoCoMo Chugoku, Inc.; NTT DoCoMo Shikoku, Inc.; and NTT DoCoMo Kyushu, Inc.

DoCoMo's long term business strategy focuses on three market elements – multimedia, ubiquity, and globalization. Multimedia refers to the development and deployment of increasingly sophisticated non-voice services, including 3.5 and 4G technologies and services. Ubiquity refers to adding communicative ability to all mobile products, such as intelligent home appliances and telematics for automobiles. Through globalization DoCoMo seeks to enhance subscribers' wireless usage and convenience by expanding the use of W-CDMA technology outside of Japan. DoCoMo has made it a priority to trade and compete fairly, openly, and freely in the Japanese and other markets, and has incorporated this commitment into its corporate Code of Ethics.⁹

DoCoMo has had a minimal presence in the United States to date. NTT DoCoMo USA, Inc. ("DoCoMo USA"), a wholly-owned subsidiary of DoCoMo, was established in 1999 and is headquartered in New York, New York. DoCoMo USA has offices in New York and Washington, D.C. DoCoMo USA oversees DoCoMo's interests in the United States, including developing and enhancing DoCoMo's relationships with its existing business partners, conducting research in the technology and wireless industries, and supporting DoCoMo's public relations efforts in the United States.

⁹ Other policies emphasized in DoCoMo's Code of Ethics include: (1) complying with legal requirements and ethical standards; (2) adhering to a "customer-first" model for products and services; (3) respecting customers' rights and protecting personal information; (4) safeguarding corporate proprietary and confidential information; (5) disclosing company information to keep shareholders informed and to enhance the transparency of the company's business activities; (6) participating in and contributing to social causes; (7) preserving the environment; (8) respecting the rights and individuality of employees; and (9) pledging to maintain and foster awareness of the company's Code of Ethics. See NTT DoCoMo Code of Ethics, *available at* <http://www.nttdocomo.com/about/code/> (last visited Apr. 3, 2006).

In November 2004, DoCoMo USA launched a wireless LAN access service called “Namikiteru” for Japanese-speaking residents in the United States.¹⁰ Namikiteru provides subscribers with high-speed Internet access over public wireless LAN access points, access to Japanese-language portal sites operated by DoCoMo USA, and technical support in Japanese. Through its own Wi-Fi network and a roaming arrangement with T-Mobile USA, Inc. (“T-Mobile”), Namikiteru is available in New York, certain airports, and at T-Mobile “Hot Spots” throughout the United States.

In November 2000 DoCoMo established DoCoMo Communications Laboratories USA, Inc., a research lab facility in San Jose, California. In May 2005 DoCoMo also acquired a 49 percent equity interest in Telargo, Inc., a mobile assets management service provider in the United States.¹¹ In addition, July 2005 DoCoMo established DoCoMo Capital, Inc., a wholly-owned U.S. subsidiary based in San Jose, California to invest in venture companies that develop advanced mobile communication technologies.¹² In July 2005 DoCoMo also established an indirect subsidiary, inter-touch (USA), Inc., that will offer broadband services to hotels. Neither DoCoMo nor any of its U.S. subsidiaries holds FCC authorizations.¹³ Accordingly, the proposed acquisition of Guam Cellular and the assets of Guam Wireless represents the first time that

¹⁰ DoCoMo USA Press Release, *NTT DoCoMo USA to Launch Public Wireless LAN Access Service “namikiteru”* (Oct. 18, 2004), available at http://www.docomo-usa.com/news/news_bnl.html.

¹¹ DoCoMo Press Release, *NTT DoCoMo to Acquire Stake in Telargo, US Mobile Assets Management Company* (June 29, 2005), available at <http://www.nttdocomo.com/pr/2005/000674.html>.

¹² DoCoMo Press Release, *NTT DoCoMo to Establish Investment Subsidiary in California* (May 9, 2005), available at <http://www.nttdocomo.com/pr/2005/000659.html>.

¹³ DoCoMo’s former minority equity interest in AT&T Wireless Services, Inc. (“AT&T Wireless”) was purchased as part of the 2005 merger between AT&T Wireless and Cingular Wireless Corporation.

DoCoMo would hold FCC authorizations and would control a regulated U.S. telecommunications company.

DoCoMo is a publicly traded company listed on the Tokyo, London and New York stock exchanges. As of December 2005, Nippon Telegraph and Telephone Corporation (“NTT”) holds a 61.96 percent direct voting and equity ownership interest in DoCoMo. The amount of NTT’s ownership interest in DoCoMo has fluctuated, but generally has decreased over time since DoCoMo became a publicly traded company. NTT is further described in Section I(D) below. As of December 2005, the Japanese government holds a 38.37 direct voting and equity percent ownership interest in NTT and derivatively, a 23.77 percent indirect ownership interest in DoCoMo. No other entity holds more than a five percent direct or indirect ownership interest in DoCoMo. To the best of DoCoMo’s knowledge, more than 75 percent of DoCoMo’s outstanding stock is held by shareholders from WTO member countries, including Japan, the United States, and the United Kingdom.¹⁴

DoCoMo’s day-to-day operations are conducted independently of NTT and NTT’s other subsidiaries.¹⁵ Neither NTT nor any other entity that holds DoCoMo common stock possesses special or preferential voting rights. As a majority shareholder, however, NTT has the ability to influence certain business decisions of DoCoMo, including the right to appoint directors.¹⁶ For example, the following matters are discussed directly with or reported to NTT: (1) subjects that “are required to be voted on at shareholders’ meetings, including amendments to DoCoMo’s Articles of Incorporation, mergers and consolidations, assignments and transfers of business,

¹⁴ A chart listing the top ten DoCoMo shareholders is attached as Exhibit B.

¹⁵ See DoCoMo SEC Form 20-F at 12 (June 27, 2005) (“DoCoMo 20-F”).

¹⁶ See *id.*

election and removal of directors and corporate auditors, and appropriation of profits; (2) increases in share capital; (3) investments, including international investments; (4) loans and guarantees; and (5) establishment of businesses plans.”¹⁷ As further discussed below, DoCoMo, NTT, and NTT’s other subsidiaries are legally prohibited from providing each other with preferential treatment.¹⁸ All negotiations and business transactions conducted between DoCoMo, NTT, and other NTT subsidiaries are on an arm’s-length basis.¹⁹

As noted above, the Japanese government holds an indirect interest in DoCoMo through its ownership in NTT. The government has no special or preferential voting rights with regard to DoCoMo’s operations. Any ability to affect DoCoMo’s business decisions originates solely from the government’s capacity as a major shareholder of NTT. As further described below, however, the government has not used its shareholder position to direct the management of NTT or any of NTT’s subsidiaries, including DoCoMo. Moreover, the government’s ownership interest in DoCoMo has steadily declined as the government has decreased its ownership interest in NTT, and, as noted above, NTT has decreased its ownership interest in DoCoMo. Further, the government’s indirect ownership of DoCoMo confers no special subsidies, tax preferences, employment rights, or any other benefits on DoCoMo.

DoCoMo’s Articles of Incorporation provide for a maximum of fifteen members on its board of directors. The DoCoMo board currently consists of thirteen members, each of whom is serving a two year term. Directors can serve consecutive terms. There are no interlocking directorates between DoCoMo and NTT. No director or officer serving on DoCoMo’s board of

¹⁷ See *id.* at 56.

¹⁸ See NTT SEC Form 20-F at 12 (June 30, 2005) (“NTT 20-F”).

¹⁹ See DoCoMo 20-F at 55.

directors is a government official. DoCoMo's Articles of Incorporation also provide for a maximum of five corporate auditors, one of whom is required to be independent. DoCoMo's audit team consists of five auditors, three of whom are not affiliated with DoCoMo.

DoCoMo operates in a highly competitive telecommunications market in Japan. In 1985 the Japanese government implemented significant changes to its legislative and regulatory framework for the country's telecommunications industry. Specifically, the Japanese legislature (the Diet) introduced the Telecommunications Business Law ("TB Law"), which opened the telecommunications market to competition. DoCoMo and other mobile operators in Japan are generally subject to the Telecommunications Business Law, which sets forth various directives applicable to the entire Japanese telecommunications industry, and the Radio Law, which addresses the management and use of spectrum. The Ministry of Internal Affairs and Communications (the "MIC," formerly known as the Ministry of Public Management, Home Affairs, Posts and Telecommunications) is the primary regulatory body in Japan with responsibility for the country's telecommunications market and implementation of Japan's telecommunications-related laws.

The Diet and the MIC on a regular basis review the competitive conditions in Japan's telecommunications market and take steps to promote competition and encourage market entry. For example, the United States recently commended Japan for stimulating competition by issuing spectrum licenses to three new entrants into the wireless market, which is further discussed below.²⁰ Key aspects of Japan's pro-competitive regulatory environment include:

²⁰ See Annual Reform Recommendations from the Government of the United States the Government of Japan under the U.S.-Japan Regulatory Reform and Competition Policy Initiative at 2 (Dec. 7, 2005), available at http://www.ustr.gov/assets/World_Regions/North_Asia/Japan/Regulatory_Reform_Initiative/asset_upload_file168_8516.pdf.

- **Foreign Ownership.** All restrictions against foreign ownership of telecommunications companies have been eliminated, except for foreign ownership of NTT. As further discussed below, foreign ownership of NTT is limited to one-third of the company's outstanding shares.²¹
- **No Structural Market Entry Barriers.** All telecommunications and information markets are open to competition, and no carrier is automatically precluded from entering any particular market. Japan has replaced a classification system that previously required facilities-based carriers to acquire MIC approval before providing services with a registration and/or notification requirement.²²
- **Liberal Licensing.** The Japanese government does not have special licensing rules for foreign carriers.
- **Interconnection.** All telecommunications carriers are required to allow other carriers to interconnect their facilities, unless there are legitimate reasons for refusing interconnection. If a carrier refuses an interconnection request, the MIC has authority to order the carrier refusing interconnection to start or reopen negotiations.²³
 - DoCoMo's mobile termination rates have declined by approximately 25 percent over the last four years to levels currently among the lowest in developed countries that employ a "calling party pays" regime.²⁴
- **Regulations For Companies With Market Power.** Specific laws and regulations are in place to prevent dominant telecommunications carriers from abusing their market power.
 - The MIC has authority to designate a carrier whose total revenue from a particular type of telecommunications service within the same geographic area exceeds 25 percent of the market as "Category I" (fixed line carriers) or "Category II" (mobile carriers). To ensure proper competition, Category I and Category II carriers are prohibited from acting anti-competitively, such as by abusing or disclosing proprietary information obtained from competitors, unduly favoring certain carriers or intervening in the businesses of other carriers, manufacturers, or suppliers of equipment. They also must make interconnection agreements publicly available and disclose financial

²¹ See NTT 20-F at 11, 44.

²² See DoCoMo 20-F at 48-49.

²³ See *id.* at 49; see also NTT 20-F at 11.

²⁴ See Fourth Report to the Leaders on the U.S.-Japan Regulatory Reform and Competition Policy Initiative at 3 (Nov. 2, 2005) ("U.S.-Japan Report"), available at http://www.ustr.gov/assets/Document_Library/Reports_Publications/2005/asset_upload_file560_8292.pdf?ht=.

statements pertaining to their telecommunications businesses. NTT and its telecommunications subsidiaries, including DoCoMo, have been classified as Category I and Category II carriers.²⁵

- Japan's Law Concerning Nippon Telegraph and Telephone Corporation, Etc. (the "NTT Law"), which is further discussed below, imposes various obligations on NTT. DoCoMo is not subject to the provisions of the NTT Law.²⁶
- DoCoMo is required to establish its own transmission lines for its network independent of NTT. To the extent DoCoMo uses NTT transmission lines, such use must be on the same terms and conditions offered to competitors. Similarly, the terms and conditions of DoCoMo's use of NTT's utility poles, network, and research and development must be available to competitors. DoCoMo also is prohibited from engaging in joint procurement with NTT.²⁷
- **Other Developments.** The Law Concerning the Protection of Personal Information was implemented in April 2005, which requires telecommunications carriers to protect the personal information of subscribers. The MIC commenced a revised universal service fund system on April 1, 2006, for which it reviewed the scope of universal service, cost calculation methodology and contributions methodology.²⁸

As further evidence of Japan's continued focus on promoting competition, in 2001 President George W. Bush and Prime Minister Junichiro Koizumi, under the U.S.-Japan Economic Partnership for Growth, launched the Regulatory Reform and Competition Policy Initiative to promote economic growth and open markets in Japan. Under this initiative, Japan has taken important steps each year to improve its regulatory environment, resulting in increased consumer choice, lower prices, more innovative goods and services, and expanded opportunities for U.S. companies doing business with Japan.²⁹ For example, to create a climate that better

²⁵ See DoCoMo 20-F at 50.

²⁶ See *id.* at 48.

²⁷ See *id.* at 56.

²⁸ See Tariff Division, Telecommunications Bureau, Ministry of Internal Affairs and Communications, *The Review of the Universal Service Fund System* (Nov. 2005), available at http://www.soumu.go.jp/joho_tsusin/eng/features/universal_service_fund_system.pdf.

²⁹ U.S.-Japan Report at 1.

encourages competition and increases transparency, the Japanese government amended its Antimonopoly Act to strengthen enforcement capabilities of the Japan Fair Trade Commission (“JFTC”), modified JFTC procedures to be more transparent and fair, and strengthened Japan’s Public Comment Procedures.³⁰

In addition to increased competition within discrete segments of the Japanese telecommunications market, the growth of bundled services – such as mobile, local, long distance, Internet access, IP telephony, and video distribution services – is fostering additional competition. Companies continue to expand their product and service offerings, better positioning themselves to respond to consumer demands and intermodal competitors. Consequently, competition will continue to thrive and end user rates will continue to drop in Japan.

Wireless. DoCoMo operates in an increasingly robust competitive mobile market in Japan. In addition to DoCoMo, two additional operators provide nationwide cellular mobile phone services in Japan – KDDI and Vodafone K.K. Softbank Corp. (“Softbank”), one of the largest Internet service providers (“ISP”) in Japan which also holds interests in the fixed line telecommunications, e-commerce, and broadband market segments, recently announced its intention to acquire Vodafone K.K.³¹

The MIC recently issued licenses to provide nationwide mobile services to three new mobile competitors – Softbank, eAccess Ltd. (“eAccess”), and IPMobile Inc. (“IPMobile”) – all

³⁰ See *id.* at 33.

³¹ Softbank Corp. Press Release, *SOFTBANK to acquire Vodafone K.K., to establish mobile communications business alliance with Yahoo! JAPAN* (Mar. 17, 2006), available at http://www.softbank.co.jp/en/news/release/2006/060317_0001.html.

of which are expected to launch services between the fall of 2006 and spring of 2007.³² Softbank and eAccess, which are widely-held companies and traded on the Tokyo Stock Exchange, will hold spectrum in the 1.7 GHz band, while privately held IPMobile will use spectrum in the 2 GHz band to focus on data mobile broadband services.³³ Softbank's proposed acquisition of Vodafone K.K. will provide it with a significant edge in developing its wireless business. Softbank also can use its vast ISP customer base and networks and other communications holdings to support its wireless services, as well as generate significant revenue through providing content. eAccess can build on its existing ADSL network and rely on existing relationships with ISPs and other outsourcing partners to increase subscribers. IP Mobile intends to use a technology called TDD/TD-CDMA, which reportedly has better frequency characteristics than W-CDMA.³⁴ To advance additional competition quickly, the MIC requires each new entrant to launch service within two years and achieve 50 percent national network coverage within five years of being licensed.³⁵

Mobile operators in Japan compete vigorously for subscribers for voice and data services, which has prompted significant technological and network innovation and the introduction of new mobile services. For example, DoCoMo launched the world's first commercial 3G service over a W-CDMA system in 2001. Shortly thereafter in early 2002, KDDI launched a CDMA2000 1xRTT-based system and in late 2003 launched 1xEVDO services.

³² See World Markets Research Center, World Markets Analysis, *Three New Competitors for Japanese Mobile Market* (Nov. 10, 2005) ("World Markets Analysis").

³³ See *Japan Opens Spectrum to New Players*, RCR Wireless News – Tokyo, Nov. 14, 2005, at 23.

³⁴ See JPMorgan, Asia Pacific Equity Research, Telecommunications Industry Report at 2 (Nov. 9, 2005).

³⁵ See World Markets Analysis.

The number of mobile wireless subscribers in Japan is rapidly increasing. By the fall of 2005, there were more than 91.47 million mobile subscribers in Japan, representing a penetration rate of 71.6 percent.³⁶ By 2012, those numbers are expected to grow to 118 million mobile subscribers and a penetration rate of more than 92 percent.³⁷ These figures may be conservative given the increased competition from new entrants that likely will have a positive impact on service rates and subscriber growth.³⁸ Even if the rate of subscriber growth eventually slows due to high penetration, fewer new subscribers will intensify competition as mobile operators attempt to retain subscribers and meet consumer demand for new, innovative, and affordable services.

Wireless local number portability is expected to be introduced in Japan in late 2006 or early 2007.³⁸ As demonstrated in the United States, local number portability is projected to increase competition further in Japan's mobile market. In April 2004, the MIC estimated that as many as 30 percent of Japanese mobile end users may take advantage of local number portability to switch mobile operators.³⁹

The MIC has taken additional steps to create a flexible regulatory structure to accommodate new technologies and services and create an environment to promote advanced wireless broadband services. For example, within the past year the MIC adopted a registration

³⁶ See DoCoMo 20-F at 7, 62; *see also* World Markets Analysis.

³⁷ See World Markets Analysis.

³⁸ See *id.*

³⁸ See Morgan Stanley Equity Research, Japan, Telecommunications Industry Report at 4 (Aug. 17, 2005).

³⁹ See DoCoMo 20-F at 47.

system, rather than a licensing system, for spectrum sharing devices such as Wi-Fi.⁴⁰ The MIC also has confirmed that users of Wi-Fi spectrum will not be charged spectrum usage fees and has stated that it is considering future frequency allocations for new wireless broadband technologies (e.g., WiMax). This relaxed registration system will facilitate easier entry into the Wi-Fi and WiMax markets by providers planning to utilize voice over Internet Protocol (“VoIP”) and other technologies.⁴¹

Fixed Line: Japan has taken significant steps within the last several years to increase competition in the wireline market by authorizing additional carriers to provide services. Japan Telecom and KDDI entered into the local (intra-prefecture) telephone market in December 2004 and February 2005, respectively.⁴² Several other entities also compete for local services, such as Poweredcom in Tokyo and QTNet in Kyushu, depending on the geographic market. NTT, KDDI, Japan Telecom, and other smaller carriers also provide long distance (inter-prefecture) and international services. The introduction of competition in the fixed line market already has triggered rate reductions by NTT. Competition continues to increase as the number of VoIP service providers increases.

Other Sectors: The market for Internet access and broadband services is highly competitive, with significant market players from the telecommunications sector, major electrical utilities, and several other large service providers. The MIC reported in 2004 that the Internet

⁴⁰ See JPMorgan, Asia Pacific Equity Research, Telecommunications Industry Report at 1 (Dec. 9, 2005).

⁴¹ See *id.*

⁴² See Morgan Stanley Equity Research, Japan, Telecommunications Industry Report at 5 (Feb. 16, 2005).

connection market does not allow any particular provider to exercise market dominance.⁴³ The government also has indicated its intent to support the development of a nationwide broadband infrastructure by 2010 and is reviewing its universal service program to assist in that deployment.⁴⁴ Broadband subscriptions are steadily growing. In particular, fiber-to-the-home (“FTTH”) has become popular, with net additions overtaking the rate of expansion of DSL in 2005. FTTH is attractive because a proportion of Japanese households are located in high-rise condominiums where they can share FTTH at a lower cost.

D. NTT

NTT is the holding company of the NTT group of companies that together form Japan’s largest telecommunications company. The five primary lines of business of the NTT group are: (1) regional communications services; (2) long distance/international services; (3) mobile services; (4) data services; and (5) other services (*e.g.*, billing, research and development, marketing, etc.).

NTT was incorporated as a limited liability, joint stock corporation in April 1985. Prior to that, NTT was wholly-owned by the Japanese government. NTT’s shares are listed on the Tokyo, New York and London stock exchanges and the Osaka, Nagoya, Fukuoka, and Sapporo stock exchanges in Japan.

Initially, wireless telecommunications operations were conducted by a division within NTT. In 1991, however, DoCoMo was incorporated as a subsidiary of NTT, and in 1992 DoCoMo took over NTT’s wireless businesses. In 1999, NTT reorganized itself into a holding company structure. Nippon Telegraph and Telephone East Corporation (“NTT East”) and

⁴³ See NTT SEC Form 20-F at 12 (June 30, 2004).

⁴⁴ See JPMorgan, Asia Pacific Equity Research, Telecommunications Industry Report at 1 (Feb. 24, 2006).