Comments of the Government of Japan on 2004 "Section 1377" Review

The purpose of reviews under Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 of the United States (hereinafter referred to as “the Review”) is to examine the operation and effectiveness of each “trade agreement” in the field of telecommunications from the United States’ own point of view, and take the result into consideration when the U.S. determines whether or not to implement measures against other countries. The Government of Japan is in the first place concerned about the existence itself of such a section that encourages the U.S. Government to adopt a unilateral approach.

Majority of the U.S. concerns raised in the Review are individual issues among telecommunications carriers. The Government of Japan has elaborated a variety of mechanisms for the settlement of disputes concerning telecommunications business under the Telecommunications Business Law: submission of opinion, order (meirei) and arbitration (saitei) by Minister for Public Management, Home Affairs, Posts and Telecommunications, and mediation (assen) and arbitration (chyusai) by Telecommunication Business Dispute Commission. Telecommunications carriers are encouraged to primarily exhaust these measures to the maximum extent to address individual business problems. The Government of Japan therefore reiterates its request that the U.S. Government should reconsider its practice, as can be seen in issuing this Review, of raising individual issues among private enterprises which have not gone through above-mentioned procedures easily onto an intergovernmental table.

The following are our specific comments on each item discussed in the Review:

1. **Standardizing Technology**

Ministry of Public Management, Home Affairs, Posts and Telecommunications (MPHPT) has already issued an experimental license for a band near 2010MHz, which a Japanese company employing the technology of a U.S. company applied for.

MPHPT has not announced its intention to license additional spectrum for 3G wireless services at 2010MHz. The Telecommunication Council is currently conducting a study on development of IMT-2000 technologies.
2. Mobile Termination Rates
In Japan, when mobile interconnection rates surpass the sum of reasonable costs and reasonable profit under efficient management, Minister for Public Management, Home Affairs, Posts and Telecommunications may order to change the Article of Agreement Concerning Interconnection and any carrier can submit complaints or opinions to the Minister under the Telecommunications Business Law.

Additionally, when negotiation between carriers fails to come to an agreement because mobile interconnection rate, any carrier can make a use of existing legal frameworks such as requests for order to start or reopen negotiations (meirei) or award (saitei) by the Minister, or applications for arbitration (chusai) or mediation (assemn) by Telecommunication Business Dispute Settlement Commission.

However, there have been no instances to date of U.S.-related carriers making use of such legal frameworks.

3. Regulatory Independence
The telecommunication sector of Japan so far has made great achievements in international comparison. Broadband services are available with the highest speed and lowest costs in the world, while Japan is also pioneering popular use of the 3G wireless communications. These developments demonstrate that fair, neutral and pro-competitive policy has been working effectively in Japan. Such fair and neutral regulations on telecommunications comply with WTO's rules, and transparent processes such as public comments procedure are employed in the course of their making.

4. Other issues.
The interconnection rates of NTT East and West are the costs calculated in accordance with the long-run incremental costs (LRIC) model divided by traffic. In terms of the reference by this Review, the increase of one rate in fiscal year 2003 is a result of the decrease of traffic over fixed lines due to the changes of market environments such as increased use of mobile phone and broadband services.

MPHPT is now conducting a study on the method for calculating interconnection rates to be applied from fiscal year 2005 based on the changes in market environment mentioned above.