

Telecommunications Law and Policy around the World

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I. Introduction

Despite the continuation of a global economic slowdown in the communications sector in 2002, a number of important policy and financial decisions were made throughout the world. The following describes the key developments in critical countries throughout the world.

II. Africa

A. RECENT DEVELOPMENTS

1. *Africa-Asia-Europe submarine cable launched*

The \$639 million SAT3/WASC/SAFE undersea fibre optic cable was launched in May.¹ The cable links ten African countries with Europe and Asia and is expected to save African countries about \$300 million per year in routing costs.² Built by a group of African and international operators, the cable was spearheaded by Telkom SA, the South African operator, which will have access to one-third of its capacity. The 28,800 km cable is a combination of two projects. The South African/Far East (SAFE) cable connects Cape Town to India and Malaysia via Mauritius and has a total capacity of 130 gigabits per second. The

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1. See SAT-3/WASC/SAFE Homepage, available at <http://www.safe-sat3.co.za/> (last visited May 20, 2003).

2. *Id.*

SAT-3/West African Submarine Cable links Portugal to South Africa with landing points in eight African countries and has a total capacity of 120 gigabits per second.

2. *Monopoly ends in South Africa; privatization and licensing of SNO delayed*

In South Africa, the fixed line monopoly of Telkom SA, the state-owned incumbent operator, expired in May. Although a Second National Operator (SNO) was to be licensed this year, that process has not yet been concluded, leaving Telkom as the sole provider of services by default. Telkom's initial public offering was also delayed due to market conditions and a prolonged policy process, and this offering is now slated for spring 2003.³

3. *Nigeria licenses second national operator; privatization of NITEL delayed*

The Nigerian Communications Commission awarded Globacom, a local consortium, a license to become the Second National Operator (SNO). The license allows Globacom to run a digital mobile network, national fixed line service, national wireless service, and an international gateway for Nigeria. The company plans to roll out 1.9 million GSM lines and 1.4 million fixed lines within five years.

NITEL, the state-run operator, was slated for privatization in 2002; however, that sale was cancelled when the winning bidder failed to come up with the \$1.3 billion price for its 51 percent stake.⁴ The government is now evaluating private-sector bids for a contract to manage NITEL and plans to sell NITEL shares on the Nigerian Stock Exchange to the public after a manager is appointed.⁵

B. NEPAD

The New Economic Partnership for Africa's Development (NEPAD) dominated African developments in 2002. NEPAD is a proposed "Marshall Plan" for Africa that aims to attract about \$64 billion in investment by creating conducive conditions for private sector investment in African countries, including basic infrastructure such as telecommunications.⁶ As the first comprehensive approach for Africa formulated by African nations, NEPAD envisions that African states will commit themselves to democracy, good governance, and peace in return for increased aid, investment, debt relief, and trade opportunities.⁷

1. *G-8 Africa Action Plan*

In June, the G-8 nations affirmed their support for NEPAD at their summit in Kananaskis, Canada. They pledged approximately \$6 billion in aid to African nations that comply with the NEPAD principles.⁸ The G-8 put forth an "Africa Action Plan" that incorporates several information and communications technology (ICT) elements.

3. BBC News, *South Africa Telkom Float in Demand* (Jan. 30, 2003), available at <http://news.bbc.co.uk/2/hi/business/2708731.stm> (last visited Mar. 10, 2003).

4. Ijeoma Nwogwugwu, *Nigeria's NITEL Telecommunications Privatisation in Trouble* (Mar. 6, 2002), available at <http://www.africaonline.com/site/Articles/1,3,46115> (last visited Mar. 10, 2003).

5. *Id.*

6. Patrick Bond, *NEPAD* (June 20, 2002), available at <http://www.zmag.org/content/showarticle.cfm?SectionID=13&ItemID=2062> (last visited Mar. 9, 2003).

7. *Id.*

8. Robert Russo, *G-8 Leaders Commit to Landmark Plan to Help Break Africa's Cycle of Poverty* (June 27, 2002), available at <http://www.geocities.com/ericquire/articles/cp062702e.htm> (last visited Mar. 10, 2003); see also Chinua Akukwe, *Moving Africa Off the Back Burner: Africa, NEPAD, and the G-8* (Aug. 2, 2002), available at <http://www.worldpress.org/Africa/689.cfm> (last visited Mar. 10, 2003).

First, the G-8 pledged to help Africa create digital opportunities, using methods such as: (1) encouraging the Digital Opportunity Task Force (DOT Force) International e-Development Resources Network to focus on Africa; (2) supporting other DOT Force initiatives that can help create digital opportunities and build on African initiatives that are already underway; (3) creating ICT-friendly environments by working towards the goal of universal access to ICT by working with African countries to improve national, regional, and international telecommunications, and ICT regulations and policies; (4) encouraging and supporting the development of public-private partnerships to fast-track the development of an ICT infrastructure; and (5) supporting entrepreneurship and human resource development within the African ICT sector.⁹

Second, the G-8 also pledged to help Africa use ICT more effectively in the context of promoting sustainable economic, social, and political development. This would be accomplished by, *inter alia*, (1) supporting African initiatives to make the best use of ICT to address education and health issues and (2) supporting African countries in increasing access to, and making the best use of, ICT in support of governance, including support for the development and implementation of national e-strategies and e-governance initiatives aimed at increased efficiency, effectiveness, transparency, and accountability of government.¹⁰

2. E-Africa Commission

In September, NEPAD formally named the e-Africa Commission as the task team responsible for developing the NEPAD ICT program and implementing its project. The e-Africa Commission will also be NEPAD's instrument for collaboration in ICT matters with other bodies in Africa and abroad.¹¹ The Commission has a three-part mandate: (1) to serve as the principal advisory body to the NEPAD Heads of State and Government Implementation Committee (HSIC) on ICT matters; (2) to develop a NEPAD strategy and action plan for the accelerated development of the ICT infrastructure, services, application, and content to meet Africa's development needs; and (3) to promote the use of ICTs in support of other NEPAD programs.¹²

The e-Africa Commission has identified three projects as its top priorities. In each of these projects, the Commission's task is to identify and engage partners from different sectors of business, government, and civil society in Africa and abroad who are willing to participate in projects and facilitate collaboration between partners in formulating, planning, and executing projects.¹³

- *The e-schools project.* This project's objectives are (1) information technology (IT), literacy for each high school graduate by the end of 2008 and (2) IT literacy for each primary school graduate by the end of 2013. Schools would be connected to the e-schools ICT network and have a minimum set of ICT tools and teaching capabilities necessary to impart IT skills and improve the provision of education in Africa. The project also envisions that each e-school will have a "health point" to support NEPAD's health-related goals.¹⁴

9. See Russo, *supra* note 8; Akukwe, *supra* note 8.

10. *Id.*

11. U.N. Information and Communication Technologies Task Force, *Headquarters Press Conference By Spokespersons for E-Africa Commission* (Sept. 30, 2002), available at http://www.unictaskforce.org/thirdmeeting/press_conf.doc.

12. *Id.*

13. *Id.*

14. *Id.*

- *Building infrastructure.* The objectives of this project are two-pronged. First, the Commission aims to have in place low-cost thin route satellite capacity and the associated ground infrastructure to support the e-schools, e-health, and other high priority NEPAD projects.¹⁵ The second goal is to ensure that all African countries are connected to a broadband fibre optic cable system that will link Africa with the rest of the world.¹⁶ The Commission envisions accomplishing this goal in two stages. First, a new submarine cable system connecting South Africa and Djibouti would link countries along the East Coast of Africa. Second, all landlocked African countries would be connected to the West Coast and East Coast submarine cables.
- *E-policies and e-strategies.* This project seeks to develop e-strategies to accelerate the extension of ICT infrastructure at an affordable cost and to promote the use of ICT in other areas such as education, health, commerce, government, and agriculture. The Commission also seeks to extend the recently completed SADC e-readiness initiative to all other African countries.

3. AGOA

The African Growth and Opportunity Act (AGOA) is a central element of the Bush administration's trade and investment policy toward sub-Saharan Africa. The Act offers tangible incentives for African countries to continue their efforts to open their economies and build free markets, including the telecommunications market. Currently, thirty-five sub-Saharan African countries have been designated as AGOA beneficiaries.¹⁷

AGOA implementation activities in the telecommunications sector include the following:

- *Leland Initiative.* The USAID's Leland Initiative, launched in 1996, is the leading component of the U.S. Government's efforts to bring the benefits of the information revolution to Africa. The Leland Initiative collaborates with the Federal Communications Commission (FCC) on programs to (1) strengthen associations of African telecommunications regulators; (2) use experts from the FCC and state level regulatory bodies to help U.S. and African university programs on effective regulation; and (3) provide technical assistance to regulators in more than twenty countries.¹⁸
- *Global Technology Network.* The Global Technology Network (GTN), funded by USAID and the State Department, works in Africa to increase private sector linkages between African and American firms. From April 2001 to April 2002, GTN facilitated over thirty deals, including a deal valued at over \$50 million.¹⁹
- *Department of Commerce (DOC).* The DOC has developed a free IT and e-commerce software tool to help businesses, particularly those in developing countries, to assess their IT usage and plan future projects. The tool is designed to help stimulate demand for U.S. IT products and services in developing country markets.

15. *Id.*

16. *Id.*

17. United States Trade Representative, *African Growth and Opportunity Act*, available at <http://www.ustr.gov/regions/africa/factsheet.pdf> (last visited May 20, 2003).

18. International Telecommunications Union, *World Summit on the Information Society*, available at http://www.itu.int/osg/spu/wsis-themes/ict_stories/Leland.html (last visited May 20, 2003).

19. Global Trade and Technology Network, *Region Africa*, available at <http://www.usgtn.net/region/africa> (last visited May 20, 2003).

- *Trade and Development Agency (TDA)*. The U.S. Trade and Development Agency has provided technical assistance and training in support of United States and African policy objectives to improve the communications infrastructure in Africa. Examples include a grant to the Nigerian Communications Commission for a feasibility study on spectrum management and a technical assistance grant to the Mauritius Ports Authority (MPA) to develop a detailed implementation plan for the modernization and expansion of MPA's information technology network and systems.²⁰

III. Asia

A. CHINA

Despite the challenges presented by China's enormous size, population, and terrain, the country's telecommunications industry has made enormous progress during the last decade. At the end of 2002, China had 179 million fixed-line telephone subscribers and 145 million mobile telephone users placing tele-densities in major urban areas on par with levels in other OECD industrialized countries. Due to China's accession to the World Trade Organization (WTO) in December 2001, China is expected to deregulate its telecommunications market further, remove remaining barriers to competition, and continue to build its telecommunications networks.

In mid-1999, the Ministry of Information Industry (MII), the Chinese regulator, split China Telecom, the former PTT, into four independent groups based on specific services: China Telecom, China Mobile, China Satellite (ChinaSat), and Guo Xin Paging Company (China Unicom). In May 2002, China Telecom was further divided into two operating entities.²¹ China Telecom will continue to operate in twenty-one provinces and municipalities in south China, while Netcom, which was originally established to build and operate a major broadband network, took over China Telecom's former operations in northern China.²² As a result of the restructuring, the newly formed Netcom became China's second largest fixed service operator behind China Telecom.²³ In the mobile market, China Mobile remains the dominant player, serving eighty million customers in thirteen markets.²⁴ China's other mobile service provider, China Unicom, is China's dominant paging company and serves fifty-seven million mobile customers.²⁵

Since its accession to the WTO, China has taken a number of steps to implement its telecommunications services commitments. Most notably, it agreed to establish an independent, impartial regulatory authority and pro-competitive regulatory framework. It also established a six-year schedule for phasing in direct foreign participation in value-added

20. U.S. Trade and Development Agency, *TDA Provides Grant to Mauritius Port Authority* (Nov. 30, 2001), available at <http://mauritius.usembassy.gov/Press%20Release/Tda.htm>; see also FBO Daily, *Nigeria: Spectrum Management Feasibility Study* (Nov. 14, 2000), available at [http://www.fbdaily.com/cbd/archive/2000/11\(November\)/16-Nov-2000/bsol001.htm](http://www.fbdaily.com/cbd/archive/2000/11(November)/16-Nov-2000/bsol001.htm).

21. China Telecom, *Company Profile*, available at <http://www.chinanex.com/company/operator/cntelecom.htm> (last visited May 20, 2003).

22. *Id.*

23. *Id.*

24. Hoover's Capsule Summary, *China Mobile (Hong Kong) Ltd.*, available at <http://www.hoovers.com/co/capsule/6/0,2163,54846,00.html> (last visited May 20, 2003).

25. Hoover's Capsule Summary, *China Unicom Limited*, available at <http://www.hoovers.com/co/capsule/4/0,2163,59154,00.html> (last visited May 20, 2003).

and basic services. Nonetheless, U.S. telecommunications firms, who regard China as a strategically important and rapidly growing market, are concerned that MII is preventing foreign entry into the Chinese value-added services market (the first area opened to competition) by interpreting the term "value-added" services extremely narrowly. As a result, only one foreign provider, the Shanghai Xintian Telecom Co. joint venture, has applied for value-added services authorization, and that company's authorization only permits it to provide service to a small area of one Chinese city. United States providers are expected to lobby the U.S. Trade Representative to raise their competitive concerns with Chinese authorities in 2003 and pressure China to adhere to its market-opening commitments.

Two regulatory developments in 2002 have the greatest potential to affect the future course of Chinese liberalization. The first such development is the November 2002 appointment of Wang Xudong, a former provincial communist party chief with no telecommunications background, as the new head of MII.²⁶ Mr. Wang succeeds Wu Jichuan who lost his place on the Communist Party's Central Committee at the party's November 2002 Congress, where Hu Jintao was elected to succeed Jiang Zemin as president and chief of the Chinese Communist Party. Because Mr. Wang has no background in telecommunications, it is unclear whether he will promote liberalization more than Mr. Wu did. Among other things, Mr. Wu opposed the break-up of China Telecom. But Mr. Wang's appointment might instead signal an intention to move even more cautiously and with less independence from party leaders.

In addition, MII announced in December 2002 that it would not mandate a technology standard for so-called third generation (3G) mobile services, such as high-speed Internet access and videoconferencing.²⁷ Instead, China will let market forces determine whether Chinese carriers choose Europe's WCDMA standard, Qualcomm's CDMA2000, or China's home-grown TD-SCDMA standard. MII is expected to issue 3G licenses to China Mobile, China Unicom, China Telecom, and Netcom in the second half of 2003 or the first half of 2004.²⁸

B. INDIA

The New Telecom Policy 1999 (NTP 1999) of India has set forth a wide range of objectives for the Indian telecom sector. Until 2001, however, the sector response to these objectives was generally very slow, although a large number of operators began to provide cellular services throughout India.

The two big stories of 2002 were (1) the end of Videsh Sanchar Nigam Limited's (VSNL) monopoly on international long distance; and (2) the privatisation of VSNL by the government, which gave up majority ownership and control to the Tatas, a commercial group, thereby making the Tatas the biggest private player in the Indian telecom sector. The Tatas followed this acquisition and ended the year by acquiring Hughes Telecom Limited, which is a local carrier in Mumbai.

26. Intelcon Regulatory News, *China Selects Industry Outsider to Head Regulator*, available at <http://www.regulateonline.org/intelecon/A-China-021126.htm> (last visited May 20, 2003).

27. Latelinenews.com, *China's MII Chief Says Market to Decide 3G Standard* (Dec. 3, 2002), available at <http://latelinenews.com/ll/english/1237127.shtml>.

28. C114 Professionals, *China's 3G Standard Not Ready Until '04—Developer* (Jan. 3, 2003), available at <http://www.cn-c114.net/dailynewsread.asp?articleid=5446>.

Additionally, the government unexpectedly lifted the ban on VOIP (Voice Over Internet Protocol) on April 1, 2002 and has begun to permit PC-to-PC calls (terminating within and outside the country) and PC-to-phone calls (terminating outside the country). Phone-to-phone VOIP calls are still banned unless special IP phones are used.

A fourth licensee launched cellular services by mid-year, which led to another dramatic reduction in prices for consumers. Finally, the year ended with the much-awaited national launch of Wireless in Local Loop (WLL) services by Reliance Infocomm on December 28, 2002. Prior to that, Reliance Infocomm announced one of the biggest deals in the country on August 2002 by placing an order for over five million code division multiple access (CDMA) lines with U.S. equipment manufacturer Lucent Technologies for offering WLL limited mobile services.

In September 2002, VSNL entered into a Memorandum of Understanding with twelve other global telecom carriers to build a new submarine cable, linking South East Asia, the Middle East, and Western Europe. The cable will connect twelve countries and is expected to be complete and functional by the year 2004.

In December 2002, the Supreme Court of India set aside the ruling by the Telecom Disputes Settlement and Appellate Tribunal (TDSAT), which allowed basic service operators to offer limited mobile service. The cellular operators maintain that the TDSAT decision, if allowed to stand would have an adverse impact on their subscriber base and revenues. This would not allow the cellular operator's business to be viable, as they would have to compete with WLL licensees, which have been given a backdoor entry to an exclusive domain. The Supreme Court asked TDSAT to re-examine the issue.

The Telecom Regulatory Authority of India (TRAI) showed a slightly consumer friendly side when it considerably reduced the monthly rentals for WLL services and also allowed flexible tariff packages for limited mobile services.

The Department of Telecom (DOT) has short listed three firms for appointment as project management consultants for a \$72 million World Bank-funded telecom sector reform technical assistance project in India. The objective of the project is to promote private investment and competition in the Indian telecom sector through strengthening elements of the policy and regulatory environment.

During the second half of the year, government officials discussed the possibility of increasing the foreign direct investment limit in Indian telecom companies from the existing 49 percent to 74 percent. However, this will be difficult to achieve, given the coalition government of India.

The year 2004 is election year in India. In view of this, in February 2003, the Government of India presented a very consumer friendly budget for 2003-2004. The reduction of customs duty on import of telecom equipment should help the telecom sector.

C. JAPAN

In general, Japan's telecom sector is outperforming the rest of that nation's economy, now caught in a decade-long downturn. Growth is due to direct investment in information technology and wireless communications but also because of regulatory reforms. The Ministry of Public Management, Home Affairs, Posts, and Telecommunications (MPHPT) has removed restrictions on foreign equipment suppliers and foreign direct investment in facilities-based carriers. It has also introduced domestic and international resale of telecom services, Internet telephony, and cable telephony. Competitors to Nippon Telegraph and

Telephone Corporation (NTT), the dominant carrier in Japan, are gaining increased market share.²⁹

In 2002, the transition from wireline telecommunications traffic towards wireless services continued. Over three-fifths of the Japanese population now subscribes to wireless services, and over 70 percent of Japan's Internet users obtain access through wireless devices. Simultaneously, the number of subscribers to fixed-phone services has declined, as has the number of public phone installations. Demand for wireless devices may nearly be sated, however, as growth in the number of new mobile phone subscribers appears to be declining.³⁰

The Japanese government has indicated it wants broadband connections in 80 percent of households by 2005. Already, more than 2.5 million homes in Japan access the Internet through digital subscriber lines (DSL), a number that may exceed nine million in 2003. In addition, under the government-supported fiber-to-the-home (FTTH) project, fiber networks are displacing some digital subscriber lines and becoming available to millions of households and businesses.³¹

In 2002, the U.S. government continued to pressure Japan to promote competition in wireline services by implementing cost-oriented interconnection rates under the so-called "LRIC" model. The Office of the United States Trade Representative (USTR) contended that interconnection rates in Japan remain substantially higher than those of other markets subject to similar levels of competition, that cost determinations were insufficiently transparent, and that the above-cost access charges faced by foreign carriers amounted to discrimination.³² Since 1997, the U.S. government has attempted to use the WTO agreement on telecommunications services combined with implicit threats of trade sanctions as a means to influence Japan's domestic regulatory policy on the pricing of mandatory competitor access to the unbundled elements of the local network belonging to NTT.³³ Early indications are that the Japanese government will lower rates but will not submit to a cost-based system.

IV. Caribbean

A. EASTERN CARIBBEAN

The Eastern Caribbean Telecommunications Authority (ECTEL), created in May 2000, opened its new headquarters on June 3, 2002 in St. Lucia. As part of the program that is working towards telecommunications liberalization in the Caribbean sub-region, ECTEL

29. See U.S. Department of Commerce, International Trade Administration, *ExportIT Japan* (Aug. 2002), available at <http://web.ita.doc.gov/ITI/itiHome.nsf/AutonomyView/19542e83ab14559e85256cc20070c644?OpenDocument>.

30. See *id.* at 5, 11.

31. See *id.* at iv.

32. See United States Trade Representative, *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 1* (Oct. 23, 2002), available at http://www.ustr.gov/regions/japan/2002-10-23_reformrec.pdf; see also Ministry of Public Management and Home Affairs, *Policy on Calculation of Interconnection Charges Based on the Revised LRIC Model* (Aug. 2002), available at http://www.soumu.go.jp/s-news/2002/pdf/020904_1_21.pdf (last visited May 30, 2003).

33. Jeffrey H. Rohlfs & J. Gregory Sidak, *Exporting Telecommunications Regulation: The U.S.-Japan Negotiations on Interconnection Pricing*, 43 HARV. INT'L L.J. 317 (2002).

encompasses five members of the Organization of Eastern Caribbean States (OECS): the Commonwealth of Dominica, Grenada, St. Lucia, St. Kitts and Nevis, and St. Vincent and the Grenadines. Another important milestone that further opens the telecommunications market in the Caribbean sub-region was the end of Cable & Wireless services' exclusivity in an agreement signed in St. Georges on May 20, 2002. Intense negotiations between the heads of Government and Cable & Wireless ultimately resulted in this agreement, which allows new entrants.

B. JAMAICA

After a twenty-five year telecommunications monopoly by Cable & Wireless, Jamaica reached an agreement with the incumbent on September 30, 1999 and enacted a new Telecommunication Act on March 1, 2001, becoming the first CARICOM country to systematically open its telecommunication industry. The new regulation sets out three phases for liberalizing the telecommunications market and introduces competition in the telecommunications sector. The opening process conducted by the Jamaican Ministry of Industry Commerce and Technology, the Office of Utilities Regulations (OUR), the Spectrum Management Authority, the Jamaica Telecommunication Advisory Council (JTAC),³⁴ and the Telecommunication Appeals Tribunal has resulted in important investments mainly in wireless telephony and great opportunities for new entrants.

Phase I, commenced with the Telecommunication Act of 2000, included licenses for mobile cellular services (Digicel and Centennial), Internet access using the Cable & Wireless network for connectivity, and resale of Cable & Wireless long-distance services allowing competition in pre-paid long-distance calls.³⁵

Phase II, which Jamaica entered on September 1, 2001 and concluded in March 2003, created competition in domestic facilities and services and allowed cable TV companies to become Internet service providers.³⁶ More than twenty-nine licenses have been granted within this phase for providing fixed local telephony, domestic long distance, data services, and Internet services.³⁷ International long-distance service remains exclusive under Cable & Wireless until 2003 when phase III will commence and all telecommunication services will be opened to free competition.³⁸ Among the most important licensees granted in Phase II include: Broadnet Systems Limited, Callworks Jamaica Limited, Carib-Tel Caribbean Limited, Clear Channel Communication Limited, Digicel Jamaica Limited, Direct Access Jamaica Limited, Hemitel Limited, Jamaica Microfilm Inc., Omega Telecommunication

34. The Jamaica Telecommunication Advisory Council (JTAC) and the Telecommunication Appeals Tribunal were created by the Telecommunication Act of 2001. The Advisory Council will function transitorily during a period not longer than five years, and its responsibilities include conducting surveys, providing advice in telecommunications, and providing recommendations of nominees to the Ministry for the aforementioned Tribunal. Conversely, the Telecommunication Appeals Tribunal is a permanent specialized court to hear cases of aggrieved industry operators, and therefore reviews the regulator's decisions.

35. Carrier Services Division Jamaica, *Telecommunications Act (Jam.)* (Mar. 1, 2000), available at <http://www.cwjcarrierservices.com/carrier-new/docs/TELECOMSACT2000.doc> [hereinafter *Telecommunications Act*].

36. *Id.*

37. Ministry of Commerce, *29 New Telecommunications Licenses Issued*, available at <http://mct.gov.jm/telecomlicence.htm> (last visited May 20, 2003).

38. See *Telecommunications Act*, *supra* note 35.

Limited, Telstar Communications, Jamaica Public Service Co., XYZ Technologies Limited, Starcom, and Tiot Communication Limited.³⁹

A Jamaican company challenged the constitutionality of the Telecommunications Act before the Constitutional arm of the Supreme Court of Jamaica.⁴⁰ The court held that the provisions of the Telecommunications Act, which prohibit VoIP and allow an exclusive license for C&WJ, are unconstitutional because they breach or are likely to breach the fundamental right of freedom of expression enshrined in the Jamaican Constitution.⁴¹ The case arose out of circumstances where the Jamaican company, which provided VoIP services prior to the passing of the act, was not allowed to offer these services after the passing of the act. Parties to the case included the service provider and the Ministry of Industry Commerce & Technology.⁴² The Jamaican government will file its appeal to the Court of Appeal of Jamaica and, depending on the outcome, to the Privy Council in the United Kingdom.

V. Europe

In July 2000, a new set of regulations proposed by the Commission were adopted. They will be applied in Member States beginning in July 2003.⁴³ The current regulatory framework aims primarily at liberalizing all telecommunications services and networks and harmonizing the conditions of the open network provision (ONP).⁴⁴ The new framework is designed to reinforce competition in all market segments through five key principles: clear policy objectives, minimum regulation, legal certainty, technological neutrality, and increased responsibility for national regulatory authorities (NRAs).⁴⁵ Ex-ante regulation will be adopted for competition law remedies that are not sufficient to address market failures; however, where competition becomes effective, regulation will be rolled back.⁴⁶

The new regulatory package consists of five harmonization directives, a decision on radio spectrum, and a new competition (or full liberalization) directive.⁴⁷ The Commission has also adopted a set of non-binding measures to facilitate the implementation of the new framework. The Council Regulation on unbundled access to the local loop, adopted on December 18, 2000,⁴⁸ is also part of the new regulatory package and is therefore a solid basis for the transition to the new regulatory framework.⁴⁹

39. *Id.*

40. *See Court Declares Sections of Telecoms Act Unconstitutional, Gov't gets six week stay of order*, THE JAMAICAN OBSERVER (Dec. 21, 2002), available at http://www.jamaicaobserver.com/news/html/20021220T220000-0500_36964_OBS_COURT_DECLARES_SECTIONS_OF_TELECOMS_ACT_UNCONSTITUTIONAL.asp.

41. *Id.*

42. *Id.*

43. *Towards a New Framework for Electronic Communications Infrastructure and Associated Services*, The 1999 Communications Review COM(99)539.

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. Council Regulation 2887/2000 of 18 Dec. 2000 on Unbundled Access to the Local Loop, 2000 O.J. (L 336).

49. *See Cecile Plaidy, EU Telecommunications Law and Policy*, INT'L LAW. (Summer 2003) (discussing, more thoroughly, the implementation of the European directives).

VI. Latin American

A. BRAZIL

In September 2002, ANATEL approved a new regulation for Personal Communications Services (PCS). The new regulation received severe criticism from the current providers of mobile cellular services, such as Tele Centro Oeste and Norte Brazil Telecom. Under the new regulation, subscribers can choose their long distance service provider, and the interconnection charges after 2004 shall be negotiated without the limitation established in the former regulation for mobile cellular services. Some suggest that the free negotiation of interconnection charges and direct relations between carriers and subscribers may substantially reduce revenues of current service providers. Operators of mobile cellular services are reluctant to migrate to the new regulation due to expected losses in interconnection and long distance services.

Also in 2002, ANATEL, the Brazilian telecommunications regulatory authority, made several attempts to grant licenses for the remaining spectrum portions in the C, D, and E bands. But the allocation was only partially accomplished in November. Among the reasons for the spectrum allocation delay was strong opposition to the new PCS regulation despite modifications, which were introduced to minimize its effects. In addition, the price of each license was reduced to attract investors. Brasil Telecom, Vesper, and Telecom Americas were the main beneficiaries of licenses in the D and E bands.

Regarding the remaining spectrum portion corresponding to the Band C, ANATEL received the notifications in December 2002 from the following interested operators: Telecom Italia Mobile (TIM), Sercomtel Celular, CTBC Cellular, Telecom Americas, BellSouth, Tele Centro Oeste Celular Participacoes, Tele Norte Este PCS, Grupo Telefonica, Grupo Portugal Telecom, and Telemig Celular Participacoes. After concluding a PCS spectrum allocation in 2003, ANATEL plans to allocate the spectrum between 3.3 GHz and 10 GHz for fixed wireless services.

B. CHILE

On March 25, 2002, the Chilean President, Ricardo Lagos, signed the Digital Signature Act.⁵⁰ With this act, the Chilean Government expressed its desire to attract more foreign investment and to increase commercial transactions on the Internet. The newly enacted law grants contracts and other acts expressed electronically the same protection and enforceability as traditional contracts in writing.

In December 2002, the Government of Chile announced that it had substantially concluded a bilateral Free Trade Agreement with the United States.⁵¹ The FTA's Telecommunications Chapter, like that concluded recently between the United States and Singapore, expands beyond the WTO's Fourth Protocol to the General Agreement on Trade in services on basic telecommunications to address submarine facilities and detailed interconnection and leased lines obligations.⁵²

50. Ley sobre documentos electronicos, firma electronica y los servicios de certification de dicta firma [Chilean Digital Signatures Act], Ley No.19.799.

51. Press Release, United States Trade Representative, *U.S. and Chile Conclude Historic Free Trade Agreement* (Dec. 11, 2002), available at <http://www.ustr.gov/releases/2002/12/02-114.htm>.

52. *Id.*

C. HONDURAS

The public operator HONDUTEL, wholly owned by the government, could not be sold in 2002 despite the known intent of the government to privatize the company.⁵³ In 2000, TELMEX offered \$106 million for 51 percent of HONDUTEL's shares, but that did not satisfy the Honduran government's pricing expectations of \$300 million.⁵⁴ After this frustrating experience, the Honduran government expressed its concerns regarding the investment necessary to satisfy the demand placed by 240,000 potential subscribers, who are waiting for fixed local telephony. To satisfy the urgent necessity of 90,000 new lines, HONDUTEL requires an investment equivalent to the \$30 million gross annual income of the company. The government required an investment of \$61 million in May 2002 to partially satisfy this demand, and the government continues to await the privatization of HONDUTEL and the entry of new competitors.

The acquisition of the company may be more attractive if the government carries out its expressed intention of granting HONDUTEL a license to provide mobile cellular services in the B Band, without facing a public auction process. Regarding the scheduled auctions of spectrum and licenses for PCS, the following seven companies showed interest in July 2002: TELCEL (Mexico), Radio Móvil Dipsa, S.A.; Telgua (Guatemala); Digicel (Salvador); the Consortium Megatel-Emce (Suecia-Honduras); Bellsouth Honduras (BVI) Holdings Limited (U.S.A.); and Entel Chile.⁵⁵ On November 7, 2002, the Honduran Telecommunications Regulator, CONATEL, published the three pre-qualified companies that will participate in the auction (Entel, Bellsouth, and Megatel-Emtel).⁵⁶ The auction is scheduled for the first quarter of 2003, as well as competition in mobile telecommunications, which is now exclusively provided by Telefonica Celular S.A. (CELTEL).⁵⁷

D. PANAMA

In 2002, preparations for liberalizing the telecommunications sector was the central focus of the Panamanian Telecommunications Regulator, Ente Regulador de los Servicios Públicos (ERSP), and incumbent operator Cable & Wireless Panama. Cable & Wireless entered into an interconnection agreement with Galaxy Communications, but other entrants have not reached the necessary agreements to start their services as expected by the regulator.⁵⁸ Several complaints have been made by new entrants, arguing that C&W Panama has not offered reasonable interconnection charges.⁵⁹ ERSF, in its efforts to liberalize the sector, mediated the unsuccessful negotiations initiated by Telecable and Telecarrier with C&W Panama. In June 2002, Telecarrier was the first operator to receive a license to provide local and long distance services. In addition to the liberalization process, legislation pertaining

53. Presidency of the Republic of Honduras, *Short term Economic Analysis*, available at http://www.hondurasri.com/hri_backup/panorama_macroeconomico/panorama5.htm (last visited Mar. 4, 2003).

54. *Id.*

55. Office of Telecommunications Technologies, *Latin America Telecommunications Newsletter* (Nov. 27, 2002), at <http://telecom.ita.doc.gov/ot/newsarch.nsf.c013b66a581be8525667c006f745b/1ca987c804>.

56. *Id.*

57. *Id.*

58. Eric Jackson, *Ban of Internet Telephones Sparks Protests*, 8 THE PANAMA NEWS 21 (Nov. 10–23, 2002), at http://www.thepanamanews.com/pn/v_08/issue_21/business_02.html.

59. *Id.*

to universal service and funding services in low profit rural areas is being proffered for consideration by the Panamanian Congress, which expects to review this legislation in early 2003.

E. PERU

Peru's regulatory terrain has been dominated by discussion and legislative initiatives regarding service charges. In November 2002, the Peruvian Congress enacted the Act of Transparency and Simplification of Proceedings for Regulating Service Charges. This bill, applicable to utilities, telecommunications, and other public services, attempts to increase the participation of customer organizations in the discussions and negotiations of service charges, granting those entities the right to access information regarding the cost base for proposed price increments.

Another bill, known as "La Ley del Segundo" (Second Act), was presented to the Peruvian Congress in early September by the legislative commission for the defence of consumers' rights. This legislation would impose on the fixed telephone service provider the obligation to bill calls on a per second basis instead of the currently used per minute increment. The Executive Branch rejected the legislation, and the Peruvian Congress postponed discussions. The Executive Branch based its decision on the contractual commitment established with Telefónica de España in the privatization agreement of the former public operator in 1994. The Executive Branch expressed its intention to honor the contractual obligation and sent a clear signal to investors of the legal reliability of the Peruvian market.

In December 2002, the Peruvian telecommunications regulator, OSPITEL, approved a new price reduction for local and long distance calls following the policy known as price regime based on productivity, initiated in September 2001. Telefónica de España, after investing more than 3.6 million dollars since 1994, now faces a political threat of losing the right to charge a monthly fee for basic telephony. Debate surrounding this policy promises to occupy the Peruvian telecommunications regulatory scene in 2003.

VII. North America

A. CANADA

On November 19, 2002, Industry Canada announced that it had requested that the Canadian House of Commons study whether liberalizing the foreign ownership restrictions in telecommunications, which currently limit foreign combined direct and indirect investment to 47.5 percent in a telecommunications provider, would help achieve Canada's telecommunications policy goals. Earlier in the year, AT&T of the United States was required to sell its ownership in a Canadian carrier to comply with these restrictions.⁶⁰ SBC (out of the United States) announced in 2002 that it would sell its 20 percent interest in Bell Canada Enterprises (the parent company of Bell Canada), Telesat Canada, and Express View, the direct-to-home satellite programming distribution.⁶¹

60. *Company News: AT&T to Complete Purchase of AT&T Canada Shares*, N.Y. TIMES, Oct. 5, 2002, at C4.

61. See Mike W. Thomas, *SBC to Sell Bell Canada Stake*, DAYTON BUS. J. (June 28, 2002), available at <http://dayton.bizjournals.com/dayton/stories/2002/06/24/daily54.html>.

B. MEXICO

E-México, a project created by President Fox, experienced a significant advance in December 2002 when the Secretary of Communications and Transport granted an agreement to provide satellite connectivity to Internet centers. The grantee, "Internet Directo," a local ISP (Internet service provider), will operate in the Ku Band and use capabilities of the Mexican satellite Galaxy III-C. Internet Directo will provide connectivity to several centers through very small antennae terminals (VSATs) that will serve, among other locations, rural communities with populations fewer than 2,000 inhabitants.⁶²

México has a local telephony penetration rate of 13 lines per 100 inhabitants. The E-México project attempts to increase connectivity up to 25 lines per 100 inhabitants. Another important goal of this project is to accumulate by 2006, twenty-five web sites in education, eighteen in health, twelve in economy, and thirty-five in E-Government.⁶³ Empowering the municipal governments is also one of the goals pursued by the Mexican government's initiative.

In terms of the legislative progress, two important initiatives were presented to the Mexican Congress. The Federal Telecommunication Act was submitted on August 23, 2002.⁶⁴ But its final approval was not accomplished in 2002. The two principal criticisms to the bill were (1) a "clause of predominance," which guarantees TELMEX that any previous contractual advantage it had would not be jeopardized with the legislative reform, and (2) the fact that limitations on foreign investment in wireless services were maintained. Similarly, the positive comments received on this legislation mainly related to the additional power and autonomy granted to *Comision Federal de Telecomunicaciones* (COFETEL), the Mexican telecommunications regulatory authority. The Secretary of Communications and Transport has been reluctant in the past to grant absolute independence to this regulatory body.⁶⁵ The second initiative, submitted in November, is a bill about digital signatures and its purpose is to provide legal certainty to electronic transactions, thereby propelling their deployment in the country.⁶⁶ The project in discussion attempts to up-grade the Mexican legislation to standards already established in the largest Latin American markets.

C. UNITED STATES

Merger reviews dominated the telecommunications landscape in the United States in 2002. The FCC, rather than approving the transfer of control required to consummate the proposed EchoStar/Hughes merger, designated for hearing the merger of the two leading providers of direct broadcast service.⁶⁷ Soon after the FCC designation order, the companies

62. See *Adjudican Contrato Satelital de E-México*, available at <http://www.ahciet.net> (last visited May 20, 2003).

63. See *e-México, uno de los mayores retos del Gobierno*, available at <http://www.isocmex.org.mx/noticias.html> (last visited May 20, 2003).

64. See *Line and Tele, México: Se busca atraer inversión exterior con el proyecto de ley de telecomunicaciones*, available at <http://www.cineytele.com/supernoticia.php?noticia=322> (last visited May 20, 2003).

65. See *Críticas a la Ley Federal de telecomunicaciones Mexicanas*, available at <http://www.ahciet.net/noticias/pan.asp?idpais=13&pg=4> (last visited May 20, 2003).

66. See *Presentado proyecto sobre firmas digitales*, available at <http://www.ahciet.net/noticias/pan.asp?idpais=10&pg=28> (last visited May 20, 2003).

67. Hearing Designation Order, *Application of Echostar Communications Corporation (a Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Delaware Corporation) (Transferors) and Echostar*

withdrew their merger proposal.⁶⁸ The FCC did approve the merger proposal of AT&T and Comcast, resulting in the combination of the two leading providers of cable television in the United States.⁶⁹

With respect to telephony in 2002, BellSouth became the first incumbent local exchange carrier (ILEC)⁷⁰ to gain long-distance authority under the terms of the U.S. Telecommunications Act of 1996 (Telecom Act) in all of the states in its service area. The Supreme Court provided the FCC and competitive telecommunications providers a victory in *Verizon Communications, Inc. v. FCC* by ruling that the FCC had authority under the Telecom Act to establish a methodology for determining cost-based interconnection rates, as opposed to accepting the countering view authority.⁷¹

With respect to mobile telephony in the United States, a bankruptcy court ruled that NextWave's PCS FCC license was property that it, the bankruptcy court, and not the FCC, had authority to distribute.⁷² The FCC had previously permitted U.S. wireless carriers to bid on spectrum assigned to NextWave before its bankruptcy. The FCC decided to return auction proceeds to the winning carriers.⁷³

In broadcasting developments, the FCC authorized U.S. radio stations on October 11, 2002 to begin transmitting their audio programming in digital format, using a technology, in-band on-channel (IBOC), developed by iBiquity Digital Radio, Inc.⁷⁴

In television broadcasting, the FCC adopted a transition plan for digital television in August 2002 requiring that television receivers be manufactured with digital tuners over a certain schedule.⁷⁵ With respect to DTV deployment in the United States, the National Association of Broadcasters reported that as of December 2002, 700 DTV stations were on the air in 178 metropolitan areas, reaching 94 percent of U.S. television households.⁷⁶ The FCC reported that 807 DTV stations are "authorized to be on the air" at the end of 2002.

Communications Corporation (a Delaware Corporation) (Transferee), CS Docket No. 01-348, FCC 02-284 (Oct. 18, 2002).

68. See Letter from Counsel for Hughes Electronics Corporation, General Motors Corporation, and Echosstar Communications Corporation, to Marlene H. Dortch, Secretary, FCC, CS Docket No. 01-348 (filed Dec. 10, 2002).

69. Coverage Digest, *FCC Approves AT&T + Comcast Merger*, Converge Digest (Nov. 13, 2002), available at <http://www.convergedigest.com/regulatory/regulatoryarticle.asp?ID=5570>.

70. Memorandum Opinion and Order, *Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, MB Docket No. 02-70, FCC 02-310 (Nov. 14, 2002).

71. *Verizon Communications v. F.C.C.*, 535 U.S. 467 (2002).

72. *Id.*

73. Press Release, *FCC Adopts Order Granting Relief to Eligible Auction No. 35 Bidders*, WT Docket No. 02-276 (Nov. 14, 2002), available at <http://www.fcc.gov>.

74. *Digital Audio Broadcasting Systems And Their Impact on the Terrestrial Radio Broadcast Service*, MM Docket No. 99-325, FCC 02-286 (Oct. 11, 2002).

75. Second Report and Order and Second Memorandum Opinion and Order, *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, FCC 02-230, 17 F.C.C.R. 15978 (2002).

76. Press Release, National Assoc. of Broadcasters, *700 Stations Broadcast in Digital* (Dec. 30, 2002), available at <http://www.nab.org/Newsroom/Pressrel/releases/8002.htm>.

