

# **Guidelines for Use of Poles, Ducts, Conduits and Similar Facilities Owned by Public Utilities**

In line with the "Guidelines for Use of Poles, Ducts, Conduits and Similar Facilities Owned by Public Utilities," the policy guidelines as formulated by the "Joint Meeting of the IT Strategy Council and the IT Strategy Headquarters," the following guidelines have been established. These Guidelines will function as a managerial standard for the authorization and arbitration pertaining to rights-of-way, as stipulated under Article 73 Paragraph (1) of the Telecommunications Business Law (Law No. 86 of 1984).

## **(Basic Concept)**

### **Article 1.**

- (1) In cases where a holder of (utility) poles, conduits, ducts, tunnels, and other facilities (except administrative estates; hereinafter referred to as "facilities") (in the event that there is an entity which is using said facilities based on titles other than ownership, that person and the holder; hereinafter referred to as "facilities holders") that may be used for installation of lines for use of Type I telecommunication business provides Type I telecommunications carriers (hereinafter referred to as "carriers") with part of their facilities, these Guidelines lay down the standard ways of handling to be followed by facilities holders and carriers, in order to facilitate installation of lines by said carriers and promote access to fiber-optic networks that are essential to the offering of the ultrahigh-speed Internet, thereby improving the benefit of users and convenience of nationals.
- (2) Telecommunications carriers, power utilities, railway companies, and other public utilities fall under the category of facilities holders (except bundling facilities holders as defined under Article 14 Paragraph (1); hereinafter the same).
- (3) As a general rule, the following items shall be observed in providing the facilities;
  - i) When carriers submitted application for provision of facilities, the facilities holders shall provide facilities on equal and fair conditions, unless such access thereto obstructs their own business, the provisions of the Cabinet Order Concerning Wire Telecommunications Facilities (Cabinet Order No. 131 of 1953), and provisions of other statutes, rules and regulations on such facilities (hereinafter referred to as "statutes, rules and regulations on facilities") and the Road Law (Law No. 180 of 1952), and provisions of other statutes, rules and regulations on the management of public property (hereinafter referred to as "statutes, rules and regulations on public property") (basic principles of fairness).
  - ii) Facilities holders shall avoid prejudicial treatment because of investment relations or others, when providing said carriers with facilities (basic principles of nondiscrimination)

- iii) Facilities holders shall publicly disclose the terms and conditions pertaining to provision of said facilities beforehand (principles of transparency).

**(Period of Response for a Survey, Etc.)**

**Article 2.**

- (1) When carriers applied for a survey of facilities, facilities holders shall respond as promptly as possible with regard to a decision to accept or deny access thereto, and where the number applied for is within the normally anticipated number, they shall respond concerning said decision within two months in principle (when an inadequacy in formalities, etc. was pointed out, the period shall be a period from the time when it was pointed out, to the time when the carrier submits amended application based on the indication, plus two months).
- (2) In cases where they cannot respond within two months concerning a decision to accept or deny provision thereof, facilities holders shall notify the carriers who submitted application, in writing or by an electromagnetic method including e-mail by stating the reason to that effect.
- (3) Expenses as incurred for the survey shall be appropriate on the basis of costs. When facilities holders presented a breakdown of expenses, including personnel costs (including hours of work, number of workers and wage unit as a breakdown), traveling expenses, depletion expenses pertaining to machines and tools, etc. carriers shall bear said costs.

**(Reasons for Refusal to Lease)**

**Article 3.**

- (1) When facilities holders received application for use of facilities from carriers, the facilities holders shall in principle not refuse, except in cases cited below:
  - i) Where there is no space in the area where usage is desired.
  - ii) Where the facilities holders are scheduled to use all of the facilities for a period not exceeding five years (if a facilities plan for a longer period has been drafted by law (in the event where there is a facilities plan that has been revised in consideration of the latest demand forecast or other indicators, the period of said plan; hereinafter the same shall apply in this article), that period of time; hereinafter the same shall apply in this article) and the business year for which usage is scheduled has been expressly specified in the facilities plan.
  - iii) Where facilities holders have plans for major renovation or removal of their facilities within five years and the business year for which the renovation or removal is scheduled has been expressly specified in the facilities plan.
  - iv) Where the facilities holders intend to replace poles with underground facilities within five years and the business year for which the replacement with underground facilities is scheduled has been expressly specified in the facilities plan.

- v) Where transmission line facilities that carriers would install do not conform to or is not clearly defined in technical standards of the facilities holders and installation of said transmission facilities would make it difficult for facilities holders to perform construction or maintenance, or there is a high probability thereof.
  - vi) Where contracts on expense allocation, usage periods, and other usage conditions had not been actually performed in the past because of reasons attributable to the carrier; or there is a high probability that there will be serious inability to perform or that performance will become impracticable because relief is not practical.
  - vii) Where the installation of transmission line facilities that carriers would execute do not satisfy conditions of statutes, rules and regulations, or there is difficulty in acquiring permits (including permits for amendments) for rights-of-way and similar usage of roadways that carriers or facilities holders may receive or in amending permits and other licenses for rights-of-way when the facilities are subject to the application of provisions of statutes, rules and regulations on public property; or a high probability thereof.
  - viii) In addition to the provisions in Item vi), lack of performance in the past of provisions on confidentiality, bans on usage that is outside the scope of the objective, and items stipulated in other contracts because of reasons attributable to the carriers; or where there is a high probability that there will be serious inability to perform or that performance will become impracticable because relief is not practical.
  - ix) In addition to the preceding items, where there is other impediment to the performance of public utilities that is carried out by the facilities holders, or there is a high probability thereof.
- (2) Where facilities holders do not accept carriers' application for usage of facilities by deeming that said application falls under the category as defined under items in the preceding paragraph, the facilities holders shall notify said carriers, in writing or by electromagnetic means including e-mail, of reasons why said application is not accepted.
- (3) Where facilities holders do not accept carriers' application for usage of facilities by indicating as an only reason that said application falls under the category of reasons for refusal to lease as specified in Items ii) through iv) of the preceding paragraph and where the period from the date of planned start of usage by the carriers to the date of start of the business year for which the usage, renovation, removal or replacement with underground facilities (hereinafter referred to as "scheduled date of usage, etc."), which have been expressly indicated in the facilities plan, is beyond one year, shall indicate to the carriers on the notification under the preceding paragraph that access to said facilities is possible only for the period up to the scheduled date of usage, etc., unless it obstructs security, confidentiality of management information, or protection of customer proprietary information.

- (4) Where facilities holders were requested to give specific reasons for not accepting the application from the carriers, they shall respond to the extent that it does not obstruct security, confidentiality of management information or protection of customer proprietary information.

#### **(Leasing Period)**

##### **Article 4.**

- (1) The leasing period shall in principle be five years.
- (2) The application for usage of facilities only during a period up to the scheduled date for usage, etc. where the carriers' plan on removal of transmission facilities after the scheduled date of usage, etc. is neither sure nor rational, is deemed to fall under the category of reasons for refusal to lease as stipulated under Article 1 Paragraph (1) Item vi)
- (3) Where facilities holders provide facilities only for the period up to the scheduled date of usage, etc. and where the plan as referred to in the preceding paragraph is not implemented infallibly, it shall be deemed to fall under the category of reasons for cancellation of contract as stipulated under Article 11 Paragraph (1).
- (4) When usage of facilities is governed by statutes, rules and regulations on public property, the facilities holders shall fully consider the provisions concerning the period of occupancy of said public property.

#### **(Work and Maintenance Rules)**

##### **Article 5.**

- (1) Design and execution of work of installing transmission facilities to the facilities provided from facilities holders or maintenance of said transmission facilities shall be carried out by facilities holders or those designated by facilities holders. However, when taking measures to ensure security, guaranteed measures for accident prevention and the clarification of responsibilities as presented by facilities holders, the facilities holders shall accept that the carriers carry out design, execution and maintenance of work according to the carriers' wish.
- (2) When facilities holders consider that the guaranteed means and responsibilities for ensuring security and preventing accidents are not expressly defined and do not accept design, execution, and maintenance of work by a carrier, they shall notify the carrier of reasons for such judgment in writing or by electromagnetic means including e-mail.
- (3) With regard to the maintenance of transmission facilities as installed to the facilities provided from facilities holders, operation rules shall be expressly stated in contracts pertaining to access to said facilities.
- (4) When provision of facilities gives rise to a necessity for renovation of said facilities, facilities holders may request the carrier to bear the costs pertaining to design or execution of said work. In this case, when there is a request from the carrier for reasons why said work is necessary or for

the basis of calculation of said costs, the facilities holders shall respond to the request to the extent that it does not obstruct confidentiality of managerial information.

**(Remuneration for Leasing)**

**Article 6.**

- (1) The cost of usage charges for facilities shall in principle be calculated by adding a total of outside capital costs, equity capital costs and tax on profit, to the depreciation expenses and maintenance and operating costs. Facilities holders may request carriers to bear the appropriate facilities usage charges based upon said costs.
- (2) In the actual calculation of facilities usage charges under the preceding paragraph, the calculation shall be made by using either one of the formulas listed in a separate table or other fair and reasonable method.
- (3) Facilities holders shall notify carriers of the usage charges for facilities for which application was submitted and the basis of the calculation thereof, at a time as described in the standard operating procedures as defined under Article 13 Paragraph (1).

**(Defrayal of Removal Costs, Etc.)**

**Article 7.**

- (1) Advance notification when a need arises to dismantle or remove facilities due to special circumstances at facilities holders or as a result of request from third parties with just and proper interest, and also handling of said removal costs, shall be expressly specified in a contract pertaining to provision of facilities. In this case, the same shall apply to advance notification on dismantle or removal of transmission facilities of a carrier and handling of removal costs.
- (2) When a carrier requests facilities holders to stop provision of facilities for reasons attributable to the carrier, said carrier shall restore the facilities to the status quo ante at its own costs.

**(Procedures in the Event of Accidents or Disasters)**

**Article 8.**

Procedures in cases where facilities to which access is currently provided have been damaged as the result of an accident or disaster shall be decided upon in accordance with the provisions of contract pertaining to provision of said facilities.

**(Renewal Rules)**

**Article 9.**

- (1) When facilities holders received application from carriers for continued provision of said facilities, the provisions from Articles 2 through 8 shall be applied mutatis mutandis.

- (2) When an evergreen provision (meaning a provision specifying that the contract continues for a certain period unless either party expressly indicates their intention of refusing to renew the contract) is specified in a contract pertaining to provision of facilities, facilities holders shall, when renewal of the contract has been made difficult due to a cause as listed under each item of Paragraph (1) of Article 3, notify the carrier to that effect by no later than six months prior to the termination of the contract period, or otherwise take measures necessary for smooth provision of telecommunications services, such as by notifying to that effect immediately after the occurrence of said cause.

**(Points to Be Complied with upon Using Facilities)**

**Article 10.**

- (1) Carriers shall install transmission facilities for use of Type I telecommunications business to facilities as provided from facilities holders.
- (2) Upon installation of transmission facilities to the facilities provided from the facilities holders or using said facilities, carriers shall do so by observing the statutes, rules and regulations on facilities and technical standards as appropriately provided by the facilities holders.
- (3) Upon installation of transmission facilities to the facilities as provided from facilities holders or use of said facilities, carriers shall proceed appropriately with necessary arrangements with owners of lands on which the facilities are built or over which transmission facilities run (in cases where there is an entity which is using that land based upon titles other than ownership, such entities and the owner), such as various procedures concerning the statutes, rules and regulations on public property. In addition, facilities holders shall proceed with necessary procedures pursuant to the statutes, rules and regulations on public property in letting them use their facilities.
- (4) In cases of a dispute with any third party for reasons attributable to a carrier when installing transmission facilities to the facilities provided from facilities holders or using said facilities, or where the carrier inflicted losses upon any third party, the carrier shall solve the dispute at their own responsibilities and expenses.

**(Reasons for Cancellation of Contracts, Etc.)**

**Article 11.**

- (1) When carriers infringed upon these Guidelines or a contract pertaining to provision of facilities for reasons attributable to themselves, facilities holders may cancel the contract.
- (2) Except for provisions of the preceding paragraph, facilities holders may cancel a contract only when it has become necessary and not fungible for facilities holders to use facilities being provided for a carrier to implement public utility services and because of a reason that could not be foreseeable at the date of contract. In this case, the facilities holders shall take necessary steps to ensure smooth provision of telecommunications services, such as giving a six-month prior

notice to that effect or giving a notice to that effect that the contract will be cancelled after a reasonable period, immediately after the occurrence of said cause.

- (3) In cases where a contract has been canceled pursuant to the provisions under the preceding two paragraphs, a carrier shall promptly restore the facilities to the status quo ante and return them. However, in the contract pertaining to provision of the facilities, in cases where a compulsory removal provision (when the carrier does not restore facilities to the status quo ante despite the facilities holder's prior notice of cancellation by specifying a reasonable period, the facilities holder may execute reinstatement on its own initiative) is stipulated, the facilities holder may execute reinstatement on its own initiative in accordance with said provisions.
- (4) In the case under the preceding paragraph, the carrier shall in principle bear the costs incurred for reinstatement in cancellation as based on the provisions under Paragraph (1). In the case of cancellation as based on the provisions under Paragraph (2), the costs shall be defined expressly in a contract pertaining to provision of facilities.

#### **(Disclosure of Information)**

##### **Article 12.**

Upon inquiry from a carrier on the availability of facilities (except an application for a survey as defined in Article 2 Paragraph (1), facilities holders shall respond to the carrier on said availability in said transmission route. However, this shall not apply when it obstructs security, confidentiality of managerial information, or protection of customer proprietary information. Also, all costs pertaining to response shall be borne by the carrier. The amount of cost shall be appropriate, and a breakdown including personnel costs (including hours of work, number of workers, and wage unit as a breakdown), depletion expenses pertaining to machine and tools, etc. shall be presented to the carrier.

#### **(Preparation and Disclosure of Standard Operating Procedures Concerning Application Procedures for Leasing)**

##### **Article 13.**

- (1) Facilities holders shall prepare the Standard Operating Procedures concerning the use of facilities in conformance with these Guidelines and publicly disclose the following items concerning provision of facilities. Also, public disclosure shall in principle be made through placement on the websites.
  - i) Location where applications (for access) can be submitted and relevant contact addresses
  - ii) A standard procedure from application for provision of facilities (including a preliminary survey as involved in provision of facilities; hereinafter referred to as "survey") to actual usage (including procedures on notification of facilities usage charges as defined under Article 6 Paragraph (3) and the basis of the calculation thereof)

- iii) Standard styles of application forms, notifications, and other necessary documents, and types of documents to be attached thereto
  - iv) Reasons for refusing to provide access to said facilities
  - v) Standard charges of the usage of facilities and the basis for the calculation thereof
  - vi) The standard period required from the time when an application for a survey is submitted, to the time when a decision to accept or deny access thereto is made (the standard period of response for a survey)
  - vii) The method of calculating costs pertaining to surveys conducted in connection with the leasing of said facilities
  - viii) The standard period required from the time when a survey application is submitted, to the time when the usage of said facilities commences
- (2) Where it is difficult to establish standard charges for the usage of facilities as specified in Item v) of the preceding paragraph, a standard period of time as specified in Item vi) of the preceding paragraph, or a standard period of time as specified in Item viii) of the preceding paragraph, it may be replaced with exemplification as based on the actual results in the past.
- (3) When facilities holders establish two locations or more where applications can be submitted, they shall in principle standardize the application procedures at all such locations.
- (4) When the details as specified in each item under Paragraph (1) vary from one location to another, each location shall prepare and publicly disclose the standard operating procedures pursuant to the provisions under Paragraph (1).

**(Bundling Cables)**

**Article 14.**

- (1) In cases where any person holding such facilities as messenger wires, etc. that can be used for bundling cables (meaning a carrier's practice of installing its transmission facilities by bundling them to the wired telecommunications facilities as already installed on utility poles by telecommunications carriers, cable television broadcasting facilities holders, and others; hereinafter the same shall apply) (limited to facilities installed to (utility) poles as held by public utilities who fall under facilities holders in these Guidelines; hereinafter referred to as "bundling facilities") (when there is an entity which is using bundling facilities based on titles other than ownership, such entities and the owner; hereinafter referred to as "bundling facilities holders") provides a carrier with bundling facilities, Item i) and ii) of Paragraph (3) of Article 1 shall apply to the standardized procedures to be observed by bundling facilities holders and carriers.
- (2) Carriers shall obtain consent from a facilities holder who owns poles with bundling facilities installed (hereinafter referred to as "pole holders"), prior to actual bundling.

- (3) When there is a request from pole holders for consent as defined in the proviso of Paragraph (9), bundling facilities holders shall comply with it except when there are rational reasons for not doing so.
- (4) When carriers applied for provision of bundling facilities, the bundling facilities holders shall respond as soon as possible concerning a decision to accept or deny provision thereof.
- (5) When bundling facilities holders received application for provision of bundling facilities, they shall in principle not refuse to lease bundling facilities, except in cases where it falls under the following reasons:
  - i) Pole holders have not indicated a need for bundling in their response to a carrier pursuant to the provisions under Article 2.
  - ii) Bundling cables leads to non-conformance to the technical standards of pole holders.
  - iii) Bundling cables causes difficulty to the construction or maintenance by the bundling facilities holders, or there is a high probability thereof.
  - iv) An arrangement as defined in Paragraph (7) has not been fulfilled in the past due to reasons attributable to a carrier involved, or there is a high probability of serious default or default beyond remedy.
- (6) Bundling facilities holders may seek reasonable charges of usage based on costs when they provide bundling facilities to carriers. In this case, if there is a request for the basis for the calculation thereof, they shall comply with the request.
- (7) The bundling facilities holders and the carriers shall fix the following and other details necessary for bundling cables prior to bundling cables.
  - i) Leasing period
  - ii) Work or maintenance rules
  - iii) Leasing price
  - iv) Cost bearing in dismantle or removal
  - v) Procedures in the event of an accident or disaster
  - vi) Renewal rules
  - vii) Matters to be complied in using facilities (including matters concerning confidentiality)
  - viii) Reasons for canceling contracts
  - ix) Attribution of ownership of shared facilities
  - x) Approach to bundling with other carriers
- (8) In making a decision to lease poles by pole holders, it shall not be construed to fall under the category of "there is actually no space" as defined in Item i) of Paragraph (1) of Article 3, except in cases where bundling of bundling facilities holders and carriers fall under the provisions under Item v) of the same paragraph.
- (9) When pole holders indicated a need for bundling cables in their response to a carrier pursuant to the provisions under Article 2 and, as a result of failure to display the name or corporate name of

the bundling facilities holder on transmission facilities of the bundling facilities holder, the carrier made an inquiry on the name or corporate name, they shall notify the carrier thereof. However, the same shall not apply in cases where the consent from bundling facilities holders is not obtained for said notification.

- (10) When pole holders calculate usage charges for poles pertaining to the portion where two or more persons are bundling cables, they shall establish the pole occupancy ratio by taking the situation fully into account.

## **Supplementary Provisions**

### **(Transitional Measures to Entities Covered)**

#### **Article 1.**

Public utilities falling under the category of facilities holders in these Guidelines shall for the time being be telecommunications carriers, power utilities and railway companies.

#### **(Review)**

#### **Article 2.**

These Guidelines shall be examined on April 1 of every year for the degree, etc. of progress in usage of facilities and shall be reviewed and amended according to the results of the review. In addition, upon the review, facilities holders shall provide necessary cooperation, including provision of reference materials.

### **Separate Table**

$$1 A=(Bx+C) \times (Dz/Dx) \times F$$

$$2 A=(Bx+C) \times (Ez/Ex) \times F$$

$$3 A=(Bx+C) \times (Ey/Ex) \times (Dz/Dy) \times F$$

$$4 A=\{Bz+C \times (Dz/Dx)\} \times F$$

$$5 A=\{Bz+C \times (Ez/Ex)\} \times F$$

$$6 A=\{Bz+C \times (Ey/Ex) \times (Dz/Dy)\} \times F$$

$$7 A=\{By \times (Dz/Dy)+C \times (Dz/Dx)\} \times F$$

$$8 A=\{By \times (Dz/Dy)+C \times (Ez/Ex)\} \times F$$

$$9 A=\{By+C \times (Ey/Ex)\} \times (Dz/Dy) \times F$$

Note 1: The above symbols mean as follows:

A Facility usage fees

Bx A total amount of depreciation costs pertaining to all owned facilities of the same type

- By A total amount of depreciation costs pertaining to all facilities of the same type in a given area
- Bz Depreciation costs pertaining to the facilities provided
- C The amount obtained after deducting a total amount of depreciation costs pertaining to all facilities held of the same type, from the amount of original costs pertaining to all the facilities held of the same type
- Dx A total quantity of all facilities held of the same type
- Dy A total quantity of all facilities held of the same type in a given area
- Dz A quantity of facilities to be provided
- Ex A total quantity of value of all facilities held of the same type
- Ey A total quantity of value of all facilities of the same type in a given area
- Ez Value of facilities to be provided
- F Occupancy ratio at a portion pertaining to provision of facilities to be provided

Note 2: For the value of facilities, either re-procurement cost (estimated cost in cases where facilities are newly obtained), acquisition cost or net cost (a cost after deduction of accumulated depreciation costs from acquisition costs) may be used.

Note 3: As regards costs, depreciation expenses, re-procurement cost, acquisition cost or net cost, an approximation may be used when necessary (for example, when uniform facilities usage charges are established for a period exceeding one year, an approximation of the average value may be used for depreciation expenses, etc., during the period based on reasonable forecast.)