

# **Manual for Construction of Networks by Telecommunications Carriers**

Ministry of Public Management, Home Affairs, Posts and Telecommunications

April 2002

## Table of Contents

<b>[Preface]</b> .....	<b>3</b>
<b>[General]</b> .....	<b>7</b>
I. Outline of the Telecommunications Business Law.....	7
II. Definitions of Terms in this Manual.....	7
III. Methods for Construction of Networks.....	9
IV. Types of telecommunications business.....	12
<b>[Particulars]</b> .....	<b>14</b>
I. Laying transmission lines.....	14
II. IRU.....	15
III. Tariff-based resale/Wholesale Resale.....	16
IV. Consignment of business activities.....	19
V. Interconnection.....	20
<b>[References]</b> .....	<b>24</b>
Requirements for an IRU.....	24
Q&A concerning IRU.....	27
Requirements for authorization of consignment of business activities.....	29
Q&A concerning entrustment of business activities.....	31

**[Preface]**

Japan introduced market principles into all areas of the telecommunications market in April 1985. Since then many telecommunications carriers have entered the market. Japan also eliminated the restrictions on foreign capital for Type I telecommunications carriers except NTT in February 1998, thereby many foreign Type I telecommunications carriers have entered into the Japanese telecommunications market. As a result, their entries have brought about lower prices and diversification of telecommunications services.

The number of telecommunications carriers (as of April 1, 2002)

Type I telecommunications carriers:	384
Out of them foreign Type I telecommunications carriers:	42
Type II carriers:	10,137

Originally this manual was issued in December 1999, compiling Japan's regulatory frameworks pertaining to the construction of networks by telecommunications carriers so as to promote understanding of parties concerned. Since then, the continuous stream of regulatory reforms, such as introduction of the wholesale telecommunications service system, etc., have been implemented one after another. Thus, the methods for the construction of networks by telecommunications carriers have been diversified. To this end, descriptions of this manual fully revised at this time.

Compilation and publication of this manual will make Japan's regulatory frameworks more transparent, not only for those already doing business in the Japanese telecommunications market, but also for those intending to enter the market. This manual will help them flexibly and promptly construct their own networks. It will thus further promote competition in the telecommunications market as a result.

This manual clarifies the bird's-eye view of the legal frameworks pertaining to the construction of networks by classifying and organizing the methods for the construction of networks adopted commonly, and introducing the purpose and outline of applicable laws and regulations so as to protect users and to ensure the fair competition. Accordingly, with respect to the details of procedures and regulations for each system, please refer to the Telecommunications Business Law ([http://www.soumu.go.jp/joho\\_tsusin/eng/Resources/index.html](http://www.soumu.go.jp/joho_tsusin/eng/Resources/index.html)), the applicable cabinet orders and ministerial ordinances, and the manuals ([http://www.soumu.go.jp/joho\\_tsusin/eng/Resources/index.html#Manuals](http://www.soumu.go.jp/joho_tsusin/eng/Resources/index.html#Manuals)) listed below:

- Manual for Market Entry into Japanese Telecommunications Business

- "Guidelines for Use of Utility Poles, Ducts, Conduits, Etc." prescribing fair, non-discriminatory and transparent rules for the use of utility poles, ducts, conduits, etc. owned by telecommunications carriers, electric power companies and railroad companies
- "Guidelines for Promotion of Competition in the Telecommunications Business Field"
- Outline of the "Info-Communications Safety and Reliability Standards" (Ministry of Posts and Telecommunications Notice No. 73 of 1987)
- Toward Fair Dispute Settlement in the IT Age (the Telecommunications Dispute-Settlement Commission)

\* Website of the Ministry of Public Management, Home Affairs, Posts and Telecommunications: <http://www.soumu.go.jp/>

In order to further improve the flexibility for the construction of networks by telecommunications carriers, MPHPT hereafter will revise the relevant regulatory frameworks to the extent necessary for ensuring fair competition and user protection. Accordingly, this manual will be revised appropriately as well.

If you have any question, please feel free to contact the following sections:

MPHPT	Address	Telephone No.	Fax No.
Telecommunications Policy Division, Telecommunications Business Department, Telecommunications Bureau	2nd Bldg. of the Central Common Government Office, 1-2, Kasumigaseki 2-chome, Chiyoda-ku, Tokyo, 100-8926 Japan	03-5253-5835	03-5253-5838
Tariff Division, Telecommunications Business Department, Telecommunications Bureau		03-5253-5842	03-5253-5848
Computer Communications Division, Telecommunications Business Department, Telecommunications Bureau		03-5253-5852	03-5253-5855
Telecommunications System Division, Telecommunications Business Department, Telecommunications Bureau		03-5253-5858	03-5253-5863
International Policy Division, International Affairs Department, Telecommunications Bureau,		03-5253-5920	03-5253-5924

Telecommunications Business Division, Telecommunications Department, Hokkaido Regional Bureau of Telecommunications	2-1-1 Kitahachijyo nishi, Kita-ku, Sapporo City, #1 Sapporo Common Government Building, 060-8795	011-709-2311 (ex. 4705)	011-709-2482
Telecommunications Business Division, Telecommunications Department, Tohoku Regional Bureau of Telecommunications	3-2-23 Honmachi, Aoba-ku, Sendai City, #2 Sendai Common Government Building, 980-8795	022-221-0630	022-221-0613
Telecommunications Business Division, Telecommunications Department, Kanto Regional Bureau of Telecommunications	2-3-2 Otemachi, Chiyoda-ku, Tokyo, 100-8795	03-3243-8705	03-3242-0133
Telecommunications Business Division, Telecommunications Department, Shintu Regional Bureau of Telecommunications	1108 Asahi-cho, Nagano City, #1 Common Government Building, 380-8795	026-234-9948	026-234-9999
Telecommunications Business Division, Telecommunications Department, Hokuriku Regional Bureau of Telecommunications	2-2-60 Hirosaka, Kanazawa City, Kanazawa Hirosaka Common Government Building, 920-8795	076-233-4422	076-233-4499
Telecommunications Business Division, Telecommunications Department, Tokai Regional Bureau of Telecommunications	1-15-1 Shirakabe, Higashi-ku, Nagoya City, #3 Nagoya Common Government Building, 461-8795	052-971-9403	052-951-3581
Telecommunications Business Division, Telecommunications Department, Kinki Regional Bureau of Telecommunications	1-5-44 Otemachi, Chuo-ku, Osaka City, #1 Osaka Common Government Building, 540-8795	06-6942-8519	06-6920-0609
Telecommunications Business Division, Telecommunications Department, Chugoku Regional Bureau of Telecommunications	19-36 Higashi Hakusima-cho, Naka-ku, Hiroshima City, 730-8795	082-222-3378	082-502-8752
Telecommunications Business Division, Telecommunications Department, Shikoku Regional Bureau of Telecommunications	8-5 Miyata-cho, Matsuyama City, 790-8795	089-936-5042	089-936-5014
Telecommunications Business Division, Telecommunications Department, Kyusyu Regional Bureau of Telecommunications	1-4 Ninomaru, Kumamoto City, 860-8795	096-326-7824	096-326-7829
Administration Division,	26-29 Higashicho, Naha	098-865-2302	098-865-2311

Telecommunications Department, Okinawa Office of Posts and Telecommunications	City, 900-8797		
--	----------------	--	--

## [General]

### I. Outline of the Telecommunications Business Law

1. The Telecommunications Business Law (hereinafter referred to as the “Law”) was enforced on April 1, 1985, to regulate telecommunications business when the principle of competition was introduced into all areas of the telecommunications market.
2. The purpose of this Law is, considering the public nature of telecommunications business, to ensure the proper and reasonable operation of such business as well as promoting fair competition thereof, to secure the provision of the consistent telecommunications service, to safeguard the interests of its users, and thereby to guarantee both the sound development of telecommunications for the convenience of the public, and for promotion of the public welfare.
3. For that purpose, the Law provides for the protection of secrecy of communications, impartiality in use of telecommunications services, and the securement of essential communications; permission for telecommunications business; authorization of tariffs, charges, interconnection and other businesses for services; telecommunications facilities; rights-of-way; and so on.

### II. Definitions of Terms in this Manual

The definitions of terms used in this manual shall be as follows:

#### (1) Fiber-optic cables, etc.:

means communications materials, such as fiber-optic cables, coaxial cables, antenna, etc. which compose the machines, devices, lines, etc. necessary for operating telecommunications.

#### (2) Establishment (Article 6 Paragraph (2) of the Law):

means installation of fiber-optic cables, etc. enabling operations of telecommunications, then those fiber-optic cables, etc. are continuously controlled and managed by telecommunications operating bodies (it is not questioned whether said fiber-optic cables, etc. are "owned" by the telecommunications operating bodies or not).

#### (3) Telecommunications facilities (Article 2 Paragraph (2) of the Law)

means machines, devices, lines, etc. (that is, fiber-optic cables, etc. are installed).

**(4) IRU:**

means the indefeasible right of user. The IRU is the long-term, stable right of use of line facilities, etc. provided for in an agreement (contracts, however, also include agreements, arrangements, etc. in this manual; hereinafter referred to as “contracts”) that cannot be canceled or terminated unless all the parties to the contract agree.

A carrier who has acquired the IRU regarding fiber-optic cables, etc. owned by other persons shall be deemed as under the status that it continuously controls and manages the fiber-optic cables, etc.

**(5) Transmission circuit facilities** (Article 6 Paragraph (2) of the Law):

means telecommunications line facilities connecting transmitting points with receiving points (between remote points).

**(6) Telecommunications circuit facilities** (Article 6 Paragraph (2) of the Law):

means transmission line facilities and switching facilities installed as inseparable units therefrom, and other facilities accessory to such facilities.

**(7) Telecommunications services** (Article 2 Paragraph (3) of the Law):

means intermediating communications of others through the use of telecommunications facilities, or any other acts of providing telecommunications facilities for the use of communications of others.

**(8) Tariffs, etc.:**

means items listed below:

- \* Notified charges in accordance with Article 31 Paragraph (1) of the Law
- \* Authorized charges in accordance with Article 31 Paragraph (4) of the Law
- \* Notified charges in accordance with Article 31-3 Paragraph (1) of the Law
- \* Notified tariffs in accordance with Article 31-4 Paragraph (4) of the Law
- \* Authorized tariffs in accordance with Article 31-4 Paragraph (3) of the Law
- \* Notified tariffs in accordance with Article 31-4 Paragraph (9) of the Law

**(9) Wholesale telecommunications services** (Article 31 Paragraph (1) of the Law):

means telecommunications services exclusively for use of telecommunications business of telecommunications carriers. With respect to the wholesale telecommunications services, a portion of provisions such as the obligation to provide services (Article 34 of the Law), the notification of charges (Article 31 Paragraph (1) of the Law), the notification of tariffs

(Article 31-4 of the Law), etc. are not applied to in order to pay maximum consideration to the self-initiative among telecommunications carriers.

**(10) User:**

means a person provided for telecommunications services by telecommunications carriers. In cases where a telecommunications carrier is provided for the wholesale telecommunications services, etc. by another telecommunications carrier, said telecommunications carrier shall be deemed as a "user."

**(11) General users:**

means all users except users being telecommunications carriers. Also they are called as "end users."

**III. Methods for Construction of Networks**

Methods for the construction of networks commonly adopted currently by telecommunications carriers are listed below. Many telecommunications carriers construct their own networks by combining these methods flexibly.

**(1) "Installation" methods**

Under this method, a telecommunications carrier provides its telecommunications services to users by constructing its own transmission line facilities.

**1) "Laying transmission lines" method**

Under this method, a telecommunications carrier constructs and owns its fiber-optic cables, etc., thereby establishing them as transmission line facilities.

**2) "IRU" method**

Under this method, a telecommunications carrier, upon authorization of the ITU regarding fiber-optic cables, etc. owned by other persons, establishes them as transmission line facilities.

**(2) "Resale" method**

Under this method, a telecommunications carrier receives telecommunications services, etc. provided by another telecommunications carrier, thereby it provides its telecommunications services for users by using telecommunications facilities established by other persons.

Methods to provide services

**1) "Tariff-based resale" method**

Under this method, a telecommunications carrier resells telecommunications services provided by another telecommunications carrier based upon tariffs, etc.

2) "Wholesale resale" method

Under this method, a telecommunications carrier resells wholesale telecommunications services provided by another telecommunications carriers.

3) "Consignment of business activities" method

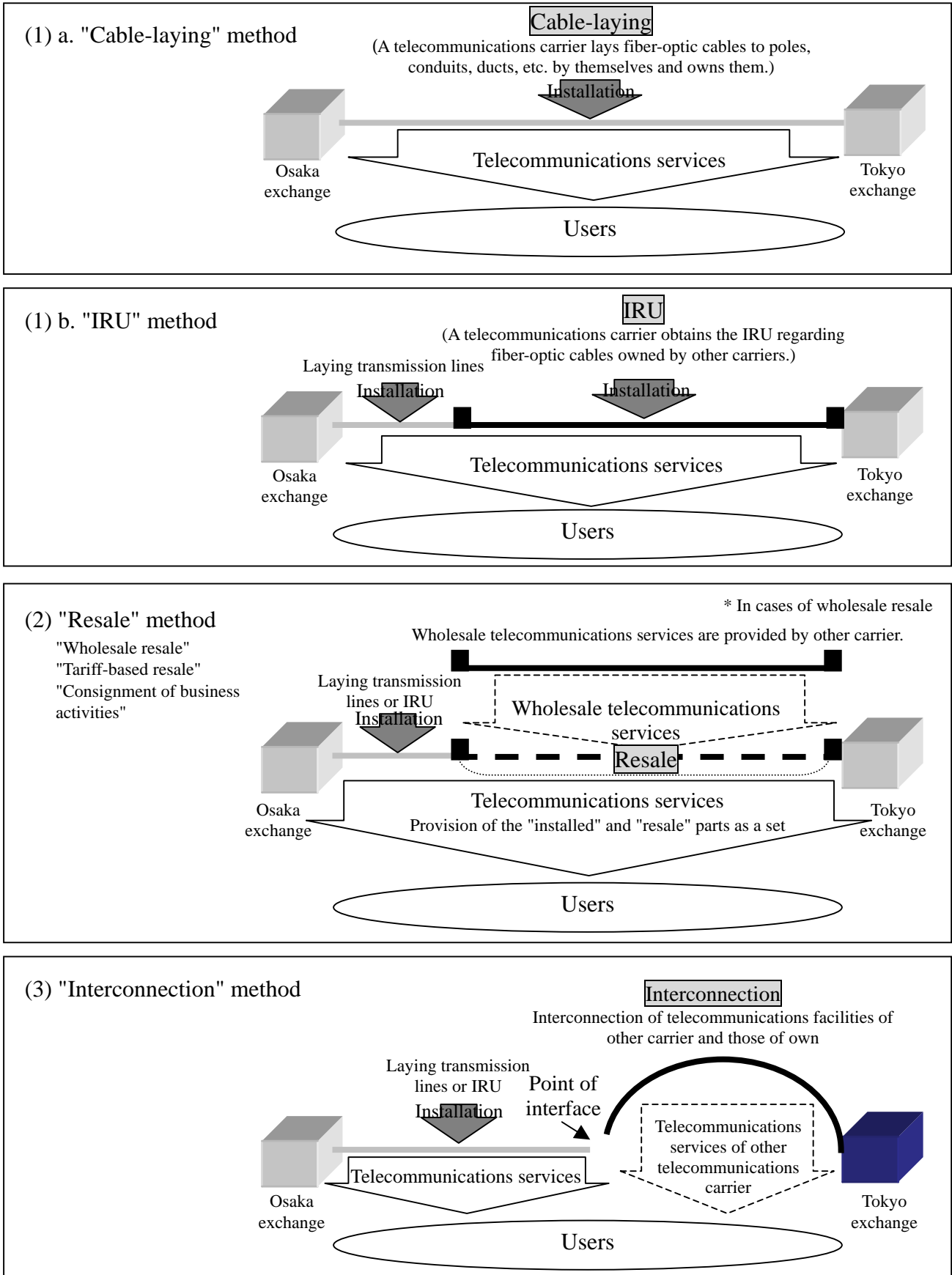
Under this method, a telecommunications carrier consigns part of its telecommunications business activities with other person (a special system as stipulated under Article 15 Paragraph (1) of the Law, which shall apply to only Type I telecommunications carriers).

(3) "Interconnection" method

Interconnecting telecommunications facilities of a telecommunications carrier and those of another telecommunications carrier, thereby each carrier provides its users with telecommunications services pertaining to its telecommunications facilities.

## Image of Construction of Networks by Telecommunications Carriers

In the case of procurement of fiber-optic cables used for specific sections by Type I telecommunications carriers



#### IV. Types of telecommunications business

##### (1) Outline of the types of telecommunications business

- 1) The Law classifies telecommunications businesses into Type I and Type II telecommunications businesses (Article 6 Paragraph (1) and Article 21 Paragraph (1) of the Law):

Telecommunications business	-> Type I telecommunications business	
	-> Type II telecommunications business	-> Special Type II telecommunications business
		-> General Type II Telecommunications business

- 2) Type I telecommunications business shall be the business which provides telecommunications services by establishing telecommunications circuit facilities (Article 6 Paragraph (1) of the Law). Since said business is public in its nature which provides infrastructures for telecommunications services indispensable to people's daily-lives and economic activities, the permission system (Article 9 Paragraph (1) of the Law) is applied to said business in order to ensure the stability and sureness of said business.
- 3) Type II telecommunications business shall be any telecommunications business other than Type I telecommunications business which provides telecommunications services without establishing its own telecommunications circuit facilities (Article 6 Paragraph (3) of the Law). Thus, the registration and notification systems, simplified regulations (Article 22 Paragraph (1) and Article 24 Paragraph (1) of the Law), are applied to said business in order to make it possible to provide a wide variety of telecommunications services.
- 4) However, a Type II telecommunications carrier is allowed to establish telecommunications circuit facilities under specific requirements (Article 6 Paragraph (4) of the Law).

##### (2) Methods of constructing networks

- 1) Since a Type II telecommunications carrier is a carrier who provides telecommunications services without "installing" telecommunications circuit facilities, said Type II carrier cannot adopt the "installation" methods (i.e., the "laying transmission lines" method and the "IRU" method) with respect to the transmission line facilities (however, it is possible in so far as it is limited to only switching facilities, such as routers, circuit switching

systems, etc.). Exceptionally, however, in the case of installing the telecommunications circuit facilities in accordance with Article 6 Paragraph (4) of the Law, this shall not apply.

- 2) With respect to the “Consignment of business activities” method as expressly set forth under Article 15 of the Law, only Type I telecommunications carriers are allowed to adopt the method under the Law (Article 15 Paragraph (1) of the Law), thus Type II telecommunications carriers are not allowed to adopt it.
- 3) As for other methods, both Type I and Type II carriers may adopt them.
- 4) Particulars hereinafter are described with consideration that a Type I telecommunications carrier is going to expand its networks in order to provide existing kinds and modes of services to wider areas.

## [Particulars]

### I. Laying transmission lines

#### (1) Outline

The basic method for establishing telecommunications circuit facilities is a method by which a Type I telecommunications carrier lays and owns fiber-optic cable, etc. itself.

#### (2) Requirements for agreement

- 1) In the case of laying fiber-optic cable, etc., it is necessary, in almost all cases, to use other persons' lands, buildings, poles, conduits, ducts, etc., so as to lay said fiber-optic cables, etc.
- 2) To this end, in principle, a telecommunications carrier is responsible to negotiate individually with owners of said land, etc. Accordingly, rights to use said land, etc. shall be established under an agreement between parties concerned.
- 3) However, a Type I telecommunications business provides infrastructures of telecommunications services indispensable to people's daily-lives and socioeconomic activities in its nature. Thus, upon laying fiber-optic cables, etc., if Type I telecommunications carriers are forced to take a detour caused by denial of some land owners, its business operations will be seriously hindered therefrom.
- 4) Accordingly, with regard to Type I telecommunications carriers, under certain conditions, the rights-of-way are set forth (Article 73, et sequentia of the Law).
- 5) In order to facilitate line laying and promote construction, etc. of fiber-optic networks indispensable for building an ultrahigh-speed Internet network by Type I telecommunications carriers, MPHPT set forth the "Guidelines for Use of Utility Poles, Ducts, Conduits, Etc." and enforced the Guidelines as from April 2001.  
\* MPHPT website: <http://www.soumu.go.jp>
- 6) As for Type I telecommunications carriers, in the case of application for permission of road occupancy (Article 32 of the Road Law), where certain requirements are met, the permission shall be given (obligatory occupation: Article 36 of the same law) and the occupation of a multipurpose underground tunnel shall be allowed as well.

7) These favorable treatments granted to Type I telecommunications carriers are named generically as “public utility privileges.”

(3) Treatment pertaining to Type II telecommunications carriers

Where Type II telecommunications carriers are allowed to construct telecommunications circuit facilities in accordance with Article 6 Paragraph (4) of the Law, they can lay and own fiber-optic cables, etc. However, no “public utility privilege” is applied to them.

**II. IRU**

(1) Outline

1) Type I telecommunications carriers may install transmission line facilities by acquiring the IRU concerning fiber-optic cables, etc. in specific sections owned by other persons (including non-telecommunications carriers) in addition to laying and owning the fiber-optic cables, etc.

2) In cases where a contract pertaining to an IRU meets the requirements for IRU (see Reference 1), it shall be deemed that the IRU was set forth (i.e., the status under which a Type I telecommunications carrier who acquire the IRU continuously controls and manages fiber-optic cables, etc.).

3) In cases where an owner of fiber-optic cables, etc. provides said fiber-optic cables, etc. without meeting the IRU requirements, said owner shall obtain permission for Type I telecommunications business (Article 9 Paragraph (1) of the Law) or follow the procedures for change of telecommunications service category, etc. (Article 14 Paragraph (1) and Paragraph (2) of the Law) since said owner virtually provides telecommunications services (so-called “dark fiber lease”).

(2) Comparison with “Laying transmission lines” method

In cases where constructing transmission line facilities by acquiring the IRU, like cases where one installs transmission line facilities by laying and owning the transmission line facilities, the regulations pertaining to Type I telecommunications carriers such as the procedures for changing the "outline of telecommunications facilities" and “business areas”(Article 14 Paragraph (1) and Paragraph (2) of the Law), the obligation to provide services (Article 34 of the Law), the obligation to maintain conformity with technical standards (Article 41 Paragraph (1) of the Law), etc. shall be applied to.

(3) Requirements for agreement

Since an IRU is to be set under a consent between parties concerned, the provision of fiber-optic cables, etc. through the “IRU” method is not mandatory by law.

(4) Treatment pertaining to Type II telecommunications carriers

In cases where Type II telecommunications carriers may install telecommunications circuit facilities in accordance with Article 6 Paragraph (4) of the Law, said carrier may install transmission line facilities by acquiring the IRU.

III. Tariff-based resale/Wholesale Resale

(1) Outline

1) A telecommunications carrier, same as a general user, may resell (tariff-based resale) its users telecommunications services provided by other Type I telecommunications carriers or other Special Type II telecommunications carriers based on tariffs, etc. in the position as a user.

2) A telecommunications carrier may resell (wholesale resale) its users wholesale telecommunications services provided by other telecommunications carrier.

(2) Comparison with the "installation" methods

1) In cases where a Type I telecommunications carrier uses telecommunications facilities, which are provided by other telecommunications carrier through the “resale” method, for its own Type I telecommunications business regulations pertaining to the Type I telecommunications business such as procedures for changing “business areas” (Article 14 Paragraph (1) and Paragraph (2) of the Law) and obligation to provide services (Article 34 of the Law) shall be applied to said facilities.

2) With respect to said telecommunications facilities (telecommunications facilities owned by other telecommunications carriers), however, procedures for changing the “outline of telecommunications facilities” (Article 14 Paragraphs (1) and (2) of the Law) and the “obligation to maintain conformity with technical standards” (Article 41 Paragraph (1) of the Law) shall not be applied to since it is not own facilities installed by said telecommunications carriers, wherein the “outline of telecommunications facilities” (Article 9 Paragraph (2) Item iv) of the Law) and the “telecommunications facilities for telecommunications business” (Article 41 Paragraph (1) of the Law) shall be applied.

(3) Requirements for agreement

1) Obligation to provide services

i) Since the obligation to provide services (Article 34 of the Law) shall be applied to Type I telecommunications carriers, the provision of telecommunications services, in the case of request for telecommunications services based upon tariffs, shall not be refused without legitimate reasons (Article 34 of the Law).

ii) While in the case of request for wholesale telecommunications services, since the obligation to provide services shall not apply (Article 31 Paragraph (1) and Article 34 of the Law), the wholesale telecommunications services may not be provided without an agreement of the parties concerned except 2) set forth below.

2) Order and award concerning provision of wholesale telecommunications services

i) Where among telecommunications carriers (except cases where one or both of the parties are General Type II telecommunications carrier or both of the parties are domestic Special Type II telecommunications carriers (Article 39 Paragraph (2)), one party, in spite of the other party's proposal to enter into a contract for wholesale telecommunications services, does not accept entering into negotiation, etc. without legitimate reasons, the Minister of Public Management, Home Affairs, Posts and Telecommunications may order said party to start or reopen the negotiation (Article 39-6 and Article 39-4 Paragraph (1) of the Law).

ii) Where negotiations between a telecommunications carrier and a Type I telecommunications carrier with whom the telecommunications carrier tries to enter into a contract for wholesale telecommunications services fail to come to a contract with respect to such particulars as the amount of money to be paid, terms and conditions for services, etc., one or both of the parties may apply to the Minister of Public Management, Home Affairs, Posts and Telecommunications for arbitration (Article 39-6 and Article 39 Paragraph (3) of the Law).

iii) When negotiations between the parties concerned, after an order in the preceding i) has been issued, fail to come to an agreement with respect to such particulars as the amount of money to be paid, terms and conditions for services, etc., one or both of the parties may apply to the Minister of Public Management, Home Affairs, Posts and Telecommunications for arbitration (Article 39-6 and Article 39 Paragraph (4) of the

Law).

(4) A telecommunications carrier concurrently operating Type I and Type II telecommunications businesses

1) In an exceptional case, one telecommunications carrier operates two independent telecommunications businesses, wherein one is a Type I telecommunications business and the other is a Type II telecommunications business (so-called "concurrent Type I and Type II telecommunications carrier").

2) A concurrent Type I and Type II telecommunications carrier does not necessarily violate the Telecommunications Business Law. However, since there are some concerns in terms of users' protection, the following points shall be considered:

i) Minimizing the confusion at the user-side

With respect to Type I telecommunications business, unlike Type II telecommunications business, the permission system is applied to its entry or its discontinuation (Article 18 Paragraph (1) of the Law). In addition, the obligation to provide services, obligation of tariff notification (Article 31-4 Paragraph (1)), etc. are applied to the business, thereby interests of users (subscribers) are firmly protected.

Thus, in cases where one telecommunications carrier provides similar services at the same time, said carrier must strive to avoid users' confusion such as misunderstanding about terms and conditions services provided.

ii) Ensuring security and reliability of networks

With regard to telecommunications facilities for Type I telecommunications business, different from Type II telecommunications facilities, the obligation to maintain conformity with technical standards (Article 41 Paragraph (1) of the Law), etc. are applied to it, thereby security and reliability of networks are ensured.

Thus, when operating concurrent Type I and Type II businesses, the demarcation point of responsibilities for telecommunications facilities pertaining to both Type I and Type II businesses has to be expressly defined.

iii) Ensuring fair competition

In cases where a Type I telecommunications business division of a concurrent Type I and Type II telecommunications carrier provides wholesale telecommunications services for its Type II telecommunications business division within said concurrent Type I and Type II telecommunications carrier, different from the case where said

concurrent carrier provides wholesale telecommunications services for other Type II telecommunications carriers, a contractual relationship does not take place, wherein the obligation of notification for wholesale contract (Article 39-5 Paragraph (1) of the Law) is not applied to, thereby practices or conducts hindering fair competition (Article 36 Paragraph (4), etc. of the Law) may occur.

Accordingly, in the course of accounting process, segment accounting of both divisions has to be ensured.

- 3) In this case of a concurrent Type I and Type II telecommunications carrier, each regulation pertaining to each business shall be applied respectively to the Type I telecommunications business division and the Type II telecommunications business division, wherein applicable regulations are different from those which are applied to the “tariff-based resale” and “wholesale resale” methods where a Type I telecommunications carrier uses another telecommunications carrier’s telecommunications facilities for its Type I telecommunications business.

#### IV. Consignment of business activities

##### (1) Outline

- 1) In general, in the case of resale by a Type I telecommunications carrier, the Type I telecommunications carrier provides telecommunications services by purchasing telecommunications services from other telecommunications carrier by means of the “tariff-based resale” and “wholesale resale” methods.
- 2) However, when deemed that there are the “particular circumstances” (Article 15 Paragraph (2) Item i) of the Law), under which it is difficult for a Type I telecommunications carrier to effectively construct networks by means of these methods, said carrier may consign a portion of telecommunications business activities to other carriers with authorization from the Minister of Public Management, Home Affairs, Posts and Telecommunications (as for requirements for authorization, see Reference 2).
- 3) Said consignment is to be an exceptional and complementary system, since this shall not be authorized without the “particular circumstances,” networks cannot be constructed by other methods.

##### (2) Comparison of “tariff-based resale” and “wholesale resale” methods

Regulations pertaining to Type I telecommunications business shall be applied to the portion

pertaining to the consignment in the case of consignment of business activities.

(3) Requirements for agreement

There is no statutory obligation to accept consignment of business activities, since an agreement of consignment shall be voluntarily concluded between the parties concerned.

(4) Treatments pertaining to Type II telecommunications carriers

Type II telecommunications carriers are not subject to this system since the Law expressly sets forth that only Type I telecommunications carriers are subject to this system (Article 15 Paragraph (1) of the Law).

## V. Interconnection

(1) Outline

- 1) In general, telecommunications carriers can expand their geographical coverage of services and can also provide comprehensive services for users by interconnecting their networks.
- 2) In addition to the “wholesale resale” method, etc., wherein one telecommunications carrier provides telecommunications services for other telecommunications carriers, thereby allowing the latter to resell the purchased telecommunications services to users, a method that allows each carrier to provide users with telecommunications services pertaining to its own telecommunications facilities, starting from a point of interface as the demarcation point of responsibilities (“interconnection” method), has been commonly adopted.
- 3) Users’ price setting methods for this “interconnection” method are commonly determined by negotiation among carriers. The methods are as follows:
  - i) A method that each carrier sets its own user charges for its telecommunications services provided.
  - ii) A method that one carrier sets its user charges by adding telecommunications service charges provided by the other carrier to those provided by itself (so-called “end-to-end price setting”).
- 4) In the case of the end-to-end price setting, since one carrier adds two carriers' charges, seemingly it is difficult to tell the differences from the “resale” method. However,

different from the “resale” method, each carrier provides telecommunications services directly to users, wherein each carrier is responsible for contract fulfillment.

(2) Comparison with the “resale” method

Since telecommunications facilities owned by the other carrier positioned beyond the point of interface are not its own “telecommunications facilities” and interconnected areas to which users belong as a result of interconnection (so-called “subject area of interconnection”) are not its own “service areas” (however the point of interface itself is included in its “service area”), regulations pertaining to Type I telecommunications business such as the “outline of telecommunications facilities,” the procedures for changing “service areas” (Article 14 Paragraph (1) and Paragraph (2) of the Law), the obligation to provide services (Article 34 of the Law), obligation to maintain conformity with technical standards (Article 41 Paragraph (1) of the Law), etc. shall not be applied to a portion pertaining to said telecommunications facilities, etc.

(3) Requirements for agreement

1) Obligation to interconnect (Article 38 of the Law)

Telecommunications circuit facilities of Type I telecommunications carriers are considered to have a public role as infrastructure for telecommunications services that are essential to people’s daily lives and socioeconomic activities. Accordingly, a Type I telecommunications carrier is imposed mandatory duties in order to agree to the request for interconnection of its telecommunications facilities from other telecommunications carriers with telecommunications facilities of said other telecommunications carriers unless there are any legitimate reasons for refusing it.

2) Designated telecommunications facilities

i) Category I designated telecommunications facilities (Article 38-2 of the Law)

Since the interconnection with telecommunications facilities constructed by Type I telecommunications carriers who possess a significant scale of subscriber lines is indispensable for other telecommunications carriers to perform their telecommunications businesses and is essential to enhance convenience for users, the telecommunications facilities established by the Type I telecommunications carriers who possess subscriber lines more than 50% in a given area shall be designated as Category I designated telecommunications facilities, wherein interconnection tariffs that stipulate interconnection charges and terms and conditions shall be subject to authorization and be obliged to publicize them.

ii) Category II designated telecommunications facilities (Article 38-3 of the Law)

Since Type I telecommunications carriers who possess relatively a large number of mobile terminal equipment are to be deemed that they have an advantage over other carriers in terms of interconnections, telecommunications facilities owned by said Type I telecommunications carrier shall be designated as Category II designated telecommunications facilities in order to ensure the fairness and transparency of terms and conditions for interconnection, wherein interconnection tariffs shall be subject to notification and be obliged to publicize them.

iii) Transmission line facilities, etc. of NTT East and NTT West are designated as Category I designated telecommunications facilities, and those of NTT DoCoMo and Okinawa Cellular Phone, etc. are designated as Category II designated telecommunications facilities at present.

3) Order and award of interconnection (Article 39 Paragraph (1) through Paragraph (4) of the Law)

i) A Type I telecommunications carrier shall be imposed an obligation to interconnect with other carriers as described in the preceding 1). Therefore, in cases where a Type I telecommunications carrier, in spite of other telecommunications carrier's proposal to enter into an agreement to interconnect telecommunications facilities with said Type I telecommunications carrier, does not accept entering into negotiation, and yet said carrier refuses it without legitimate reasons as required for refusing the request, the Minister of Public Management, Home Affairs, Posts and Telecommunications may order said Type I telecommunications carrier to start or reopen the negotiation (Article 39 Paragraph (1) of the Law).

ii) Moreover, in cases where among telecommunications carriers (except cases one or both of the parties are General Type II telecommunications carriers or both of the parties are domestic Special Type II telecommunications carriers (Article 39 Paragraph (2)), in spite of one's proposal to enter into an agreement to interconnect telecommunications facilities between telecommunications carriers, the other party does not accept entering into negotiation, and if specified requirements are met, the Minister of Public Management, Home Affairs, Posts and Telecommunications may order the other telecommunications carrier to start or reopen negotiation (Article 39 Paragraph (2) of the Law).

- iii) Where negotiations between the parties concerned about the interconnection to telecommunications facilities of a Type I telecommunications carrier fail to come to an agreement with respect to such items as the amount of money to be received or to be paid by them or other matters including terms and conditions for interconnection, the party (or parties) may apply to the Minister of Public Management, Home Affairs, Posts and Telecommunications for arbitration (Article 39 Paragraph (3) of the Law).
- iv) When negotiations concerning the charges to be paid by the party and terms and conditions for interconnection, etc. fail to come to an agreement after an order as described in the preceding i) and ii) has been issued, the party (or parties) concerned may apply to the Minister of Public Management, Home Affairs, Posts and Telecommunications for arbitration (Article 39 Paragraph (4) of the Law).

## [References]

### Requirements for an IRU

Requirement 1): The IRU contract cannot be canceled without consent of a Type I telecommunications carrier that acquires the right of use.

If the owner of fiber-optic cables, etc. can unilaterally cancel such a contract without consent of the Type I telecommunications carrier that acquires the right to use said fiber-optic cables, etc., the contract cannot ensure that the Type I telecommunications carrier controls and manages said fiber-optic cables, etc. on a stable basis. The contract must explicitly confirm, for example in the form of a contract, that it cannot be canceled without consent of the Type I telecommunications carrier in order to ensure that services can be provided by that carrier on a stable basis.

This does not mean that such a contract cannot include provisions that the owner of said fiber-optic cables, etc. may cancel the contract if the Type I telecommunications carrier who has acquired the right to use said fiber-optic cables, etc. defaults on obligations or otherwise breaches the contract, and still does not make payment or rectify the violation after the period of notification given to the carrier by the owner to do so.

#### Example of an IRU contract

(Principle of provision)

Article xx. The first party's use of the property shall not unilaterally be discontinued or terminated by the second party without the written consent of the first party. According to this rule as stated in the previous sentence, the second party provides the first party with the property and the first party may use it for telecommunications business purposes for a long time on a stable basis.

Note: First party: a Type I telecommunications carrier; Second party: the owner of facilities

Requirement 2): Reasonable charges for use shall be set forth for the entire period of use.

This requirement for usage charges ensures that the continuous control and management of fiber-optic cables, etc. cannot be obstructed by prohibitive charges that might be set forth in the middle of the term by the owner of the fiber-optic cables, etc.

#### Example of an IRU contract

(Charges)

Article xx. The charges for the property to be provided shall be calculated on the basis of the costs including depreciation, interest payable, taxes and dues, maintenance and administration costs, costs of moving facilities, costs of recovery from failures, charges for the use of power distribution facilities, charges paid by the second party for the occupation and use of roads and/or rivers, and costs of the procedure for their occupation and use.

Requirement 3): No third party shall be positioned by the owner of telecommunications facilities to have a security interest in the property.

If a third party is positioned to have a security interest in the property provided, the Type I telecommunications carrier's right to use it could be taken away in the event that the third party exercises that security interest. Accordingly, the Type I telecommunications carrier would not be able to control and manage the fiber-optic cables, etc. on a stable basis.

Example of an IRU contract

(Conveyance of rights)

Article xx. Neither the first party nor the second party shall assign or sub-lease any of its rights or obligations provided for in this contract to a third party nor give any rights to a third party without the prior written consent of the other party.

Requirement 4): A period of use by a contract shall be of adequate length to meet one of requirements listed below, which deemed to be that the contract of use is stable:

- i) The period of use shall be ten years or more.
- ii) The period of use shall be one year or more and the following points shall be ensured in accordance with the contract, etc. Where accumulated total of the contract period of use exceeds ten years, however, this shall not apply to the contract pertaining to said portion exceeding ten years:
  - (a) An automatic renewal of the contract is provided for.
  - (b) The renewal cannot be refused without consent of a Type I telecommunications carrier.
- iii) In the case that if it is deemed that there are particular circumstances similar to those set forth in the preceding i) and ii).

This requirement ensures that the Type I telecommunications carrier can continuously control and manage said fiber-optic cables, etc. during the period necessary for said carrier to provide its services.

As for the contract period of use, it is determined as ten years referring to the legal period of

depreciation of fiber-optic cables, etc.

With respect to the matters in ii) (b), this does not mean that such an contract cannot include provisions that the owner of such fiber-optic cables, etc. may cancel the contract if the Type I telecommunications carrier who has acquire the right to use said fiber-optic cables, etc. defaults on obligations, or otherwise breaches the contract, and still does not make payment or rectify the violation after the period of notification given to the carriers by the owner to do so.

Example of an IRU contract

(Valid period of contract)

Article xx. This contract comes into force on the day specified under the preceding article and continues for fifteen years.

(Valid period of contract)

Article xx. This contract continues for three years as from the effective day of the preceding article, and it shall be automatically renewed under the same terms and conditions unless the first party and the second party come to an agreement to terminate this contract six months before the day of its expiration. The same shall apply after said three years have elapsed.

## Q&A concerning IRU

Major inquiries concerning the IRU system are compiled into Q&A style.

Q 1 Does it fall under telecommunications services that business activities that an owner of fiber-optic cables, etc. provides the fiber-optic cables, etc. to a Type I telecommunications carrier through the IRU method?

A. It does not.

Q 2 Is it possible for an owner of fiber-optic cables, etc. to provide some surplus cores out of one fiber-optic cable to a Type I telecommunications carrier through the IRU method?

A.

1. It is possible to provide surplus cores in units of a core.
2. However, the cores used by the owner itself and those provided through the IRU method needs to be clearly identified.
3. By definition, the owner of the cores cannot use cores provided through the IRU method.

Q 3 Is it possible that an owner of fiber-optic cables, etc. provides another person with the fiber-optic cables, etc. through the IRU method, then said other person provides a Type I telecommunications carrier with said fiber-optic cables, etc. through the IRU method?

A. It is possible.

Q 4 Is it possible that an owner of fiber-optic cables, etc. provides another non-telecommunications carrier (e.g., local public entity) with the fiber-optic cables, etc. through the IRU method, then said local public entity, etc. constructs its private telecommunications networks by using the provided fiber-optic cables, etc.?

A.

1. It is possible.
2. In this case, however, said local public entity, etc. shall be subject to the Wire Telecommunications Law since it is deemed that said local public entity, etc. install its private telecommunications networks (Article 3 Paragraph (1) of the Wire Telecommunications Law).

Q 5 Is it possible that an owner of fiber-optic cables, etc. provides a Type I telecommunications carrier with the fiber-optic cables, etc. through the IRU method on the basis of wave-length and/or band instead of the core basis?

A.

1. When providing fiber-optic cables, etc. on the basis of wave-length and/or band, it is required to obtain a permission for Type I telecommunications business.
2. When providing fiber-optic cables, etc. on the basis of wave-length and/or band, it is considered that the owner of said fiber-optic cables, etc. controls and manages the entire transmission facilities, including WDM equipment for generating wave-length and/or band.
3. Accordingly, in this case, the owner, not the telecommunications carrier with the IRU, is responsible for obtaining permission for Type I telecommunications business, and then for maintaining conformity with technical standards such as prevention of facilities' damages, etc. related to the transmission facilities, protection of users' confidentiality of communications, installation of spare telecommunications facilities, power supply equipment, etc.

## Reference 2

### Requirements for authorization of consignment of business activities

The requirements for authorization of consignment of business activities are i) "particular circumstances" under which the consignment is required and ii) a "consignee" suitable for the execution of the business activities concerned, in accordance with Article 15 of the Law.

#### 1. Particular circumstances

"Particular circumstances" that justify consigning telecommunications activities are specified under Article 8 (1) of the Examination Standards Regarding the Telecommunications Business Law.

Article 8 (1) In the event that there are legitimate reasons to prove that the purpose of entrustment cannot be achieved through purchase of wholesale telecommunications services from the consignee, etc.

It is necessary to have legitimate reasons which explain that networks cannot be constructed flexibly and efficiently through purchase of telecommunications services, wholesale telecommunications services, etc. from the consignee, as based upon tariffs, etc.

#### i) In cases where a consignee is a telecommunications carrier

In this case, it is considered that it is possible, in almost all cases, to construct networks by means of wholesale telecommunications services provided by said consignee. Therefore, at present, specific cases with legitimate reasons are inconceivable (an individual application shall be examined henceforth).

#### ii) In cases where a consignee is a non-telecommunications carrier

In this case also, except exceptional cases, it is considered that it is possible for said consignee to provide wholesale telecommunications services by obtaining permission for Type I telecommunications business that provides exclusively wholesale telecommunications services. Therefore, at present, specific cases which needs consignment of business activities in particular is inconceivable.

Exceptionally, however, it is conceivable that there will be a case where said consignee may temporarily consign its business activities until it obtains the permission.

## 2. Requirements for the consignee

The consignee must be qualified for the telecommunications business activities concerned because the consignee is consigned with part of a Type I telecommunications carrier's telecommunications business. The requirements for the consignee are specified in Article 8 (2) of the Examination Standards Regarding the Telecommunications Business Law.

Article 8 (2) The consignee shall be a person falling under any of the following cases that is deemed to have the capability to ensure the stable and reliable provision of services of the consigning Type I telecommunications carrier, and the consigning charges and other execution methods shall be appropriate for the consigning Type I telecommunications carrier to ensure stable and reliable provision of services.

- i) Where the consignee is a Type I telecommunications carrier
- ii) Where the consignee is a non-Type I telecommunications carrier, not falling under each item in Article 11 of the Law, and whose telecommunications circuit facilities used for business activities pertaining to consignment such as preparation of emergency repair equipment and materials, etc. shall meet the technical standards as stipulated in the Regulations for Telecommunications Facilities for Telecommunications Business (Ministerial Ordinance of MPT No. 30 of 1985).

In order to ensure that telecommunications services of Type I telecommunications carriers, which are the basic carriers, are provided to users on a stable basis, there are specified requirements imposed on those that are consigned with business activities by such carriers.

In view of ensuring some flexibility in Type I telecommunications carriers' networks, consignees shall not be limited to Type I telecommunications carriers but may use those other than Type I telecommunications carriers that have the capability for the continuous, reliable and stable provision of circuit facilities.

### Q&A concerning entrustment of business activities

Major inquiries concerning the consignment of business activities system are compiled into Q&A style.

Q 1 Is there any restriction regarding sections in which consignment of business activities can be made?

A

1. There are no restrictions in particular.
2. However, as explicitly stated in the text of the Law, consignment of Type I telecommunications carrier's business activities is restricted to part of telecommunications business activities and cannot cover its entire sections. In other words, a Type I telecommunications carrier is not allowed to consign all of its services.

Q 2 Is there any restriction regarding time periods during which consignment of business activities can be made?

A.

1. There are no restrictions on the period of entrustment as long as there remains particular circumstances that necessitate consigning of business activities in question.
2. As for consigning of business activities for temporary reasons, the period of consignment expires with the disappearance of such reasons.

Examples of periods of consignment

1. From (month, day, year) to (month, day, year)
2. xx years from (month, year)
3. Starting as soon as necessary preparations are made after the authorization with no expiry date specified.

Q 3 Is it true that where an international telecommunications carrier consigns its domestic transmission service, only some cases are allowed to do so?

A

1. At present, where construction of networks through the wholesale method, etc. is difficult, consignment of business activities is authorized regardless of its mode.
2. Previously, only some modes had been authorized in cases where international telecommunications carriers consign their domestic transmission business activities, or in cases where mobile telecommunications carriers consign their transmission business activities between exchanges and base stations, etc. However, deregulation has been in

progress based on the partial amendment of the Examination Standards Regarding the Telecommunications Business Law in April 2002.

<p>Q 4 In cases of telecommunications services to be provided by a local public entity, etc. which runs a Type I telecommunications business without permission under Article 15 Paragraph (2) Item i) of the Law as a non-commercial business, is it considered as particular circumstances under Article 15 Paragraph (2) Item i) of the Law?</p>
---

A

1. In cases where a local public entity, etc. constructs its own telecommunications circuit facilities, then provides other telecommunication carriers with telecommunications services, in light of users' protection, said local public entity, etc. is required in principle to obtain permission for Type I telecommunications business (business, etc. that exclusively provides wholesale telecommunications services).
2. However, in an extremely exceptional case where provision of telecommunications services by said local public entity, etc. is purely non-commercial business, said local public entity, etc. may not violate the existing Telecommunications Business Law even though it does not obtain permission under Article 9 Paragraph (1) of the Law.
3. In such a case, particular circumstances can be acclaimed since a Type I telecommunications carrier cannot obtain telecommunications services from said local public entity, etc. through the tariff-based resale method and the wholesale resale method.
4. However, in such a case, qualification of the local public entity, etc. as a consignee (particularly conformity with the technical standards) shall be strictly examined under Article 8 (2) ii) of the Examination Standards Regarding the Telecommunications Business Law, in order to ensure the interests of general users who eventually use telecommunications services provided by the local public entity, etc.