

Manual for Construction of Networks by Telecommunications Carriers

(Revised on June 28, 2016)

Ministry of Internal Affairs and Communications

(In case of any inconsistency between the Japanese and English versions, the Japanese version shall prevail.)

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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 eliminated the restrictions on foreign capital for Type I telecommunications carriers except for NTT (currently NTT shareholding and NTT East/West) in February 1998, and many foreign Type I telecommunications carriers have participated in the Japanese telecommunications market. As a result of promoting the participation of many telecommunications carriers, their entries have brought about lower prices along the diversification and sophistication of telecommunications services.

This manual compiles Japan's regulatory frameworks pertaining to the construction of networks by telecommunications carriers so as to promote understanding of parties concerned. 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.

The 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, refer to the Telecommunications Business Act, the applicable cabinet orders and ministerial ordinances, and the manuals listed below.

- Manual for Market Entry into Japanese Telecommunications Business
- Guidelines for Use of Utility Poles, Ducts, Conduits, Etc.
- Guidelines for Promotion of Competition in the Telecommunications Business Field
- Outline of the Info-Communications Safety and Reliability Standards
- Toward Fair Dispute Settlement in the IT Age (the Telecommunications Dispute-Settlement Commission)
- Guidelines for Application Relationship between the Telecommunications Business Act and the Radio Act related to MVNO
- Guidelines for Consumer Protection Rules for the Telecommunications Business Act

* Website of the Ministry of Internal Affairs and Communications (MIC) =>
<http://www.soumu.go.jp>

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

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[General]

1. Outline of the Telecommunications Business Act

- (1) The Telecommunications Business Act (hereinafter referred to as “the Act”) 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 Act is to ensure proper and reasonable operations and promote fair competition of the telecommunications business in light of the public nature of such business, and thereby ensure that telecommunications services are smoothly provided and protect the interests of the users of such services, so as to ensure sound development of telecommunications and convenience for citizens and to promote the public welfare.
- (3) To be specific, the Act provides for the protection of secrecy of communications, fairness in use, and specify rules, including those for the securing of essential communications, the registration, notification, and business operation of telecommunications carriers and the securing of the conformity of their telecommunications facilities to technical standards, the use of land and other property for telecommunications business.

2. Definitions of Terms in this Manual

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

(1) Optical fiber etc.

Communications materials, such as optical fiber, coaxial cables, antenna, etc., which compose the machines, devices, lines, etc. necessary for operating telecommunications.

(2) Installation (based on provisions including those specified in Article 9 of the Act)

Installation or establishment of fiber-optic cables, etc. enabling operations of telecommunications, thus enabling telecommunications operating bodies to operate and manage optical fiber, etc. continuously (it is not questioned whether the said optical fiber, etc. are owned by the telecommunications operating bodies or not).

(3) Telecommunications facilities (Article 2, paragraph (2) of the Act)

Machines, equipment, wires, and cables or other electrical facilities for the operation of telecommunications (that is, those in which the optical fiber etc. is

installed).

(4) IRU

Refers to the indefeasible right of users. The IRU is the long-term, stable right of uses of line facilities, etc. provided in accordance with 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 optical fiber, etc. owned by other persons shall be deemed as under the status that it continuously controls and manages the optical fiber, etc.

(5) Transmission line facilities (Article 9 of the Act)

Telecommunications facilities connecting transmitting points with receiving points (between remote points).

(6) Telecommunications circuit facilities (Article 9 of the Act)

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 Act)

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) User

A person provided for telecommunications services by telecommunications carriers. A telecommunications carrier shall be deemed to be a user if the telecommunications carrier is provided with wholesale services from another telecommunications carrier.

(9) General users

All users except users being telecommunications carriers. They are also called end users.

3. 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

Methods to enable telecommunications carriers to provide their telecommunications services to users by constructing their own transmission line facilities.

1) Laying transmission lines

Under this method, a telecommunications carrier constructs and owns its optical fiber etc., thereby establishing transmission line facilities.

2) IRU

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

(2) Wholesale method

Under this method, a telecommunications carrier receives telecommunications services provided by another telecommunications carrier, thereby providing its telecommunications services for users with telecommunications facilities established by other persons.

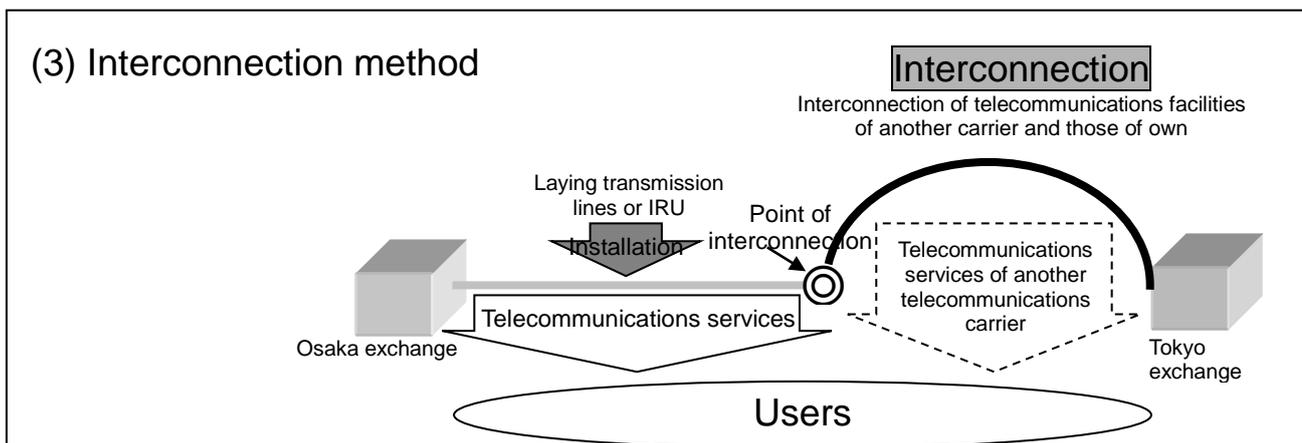
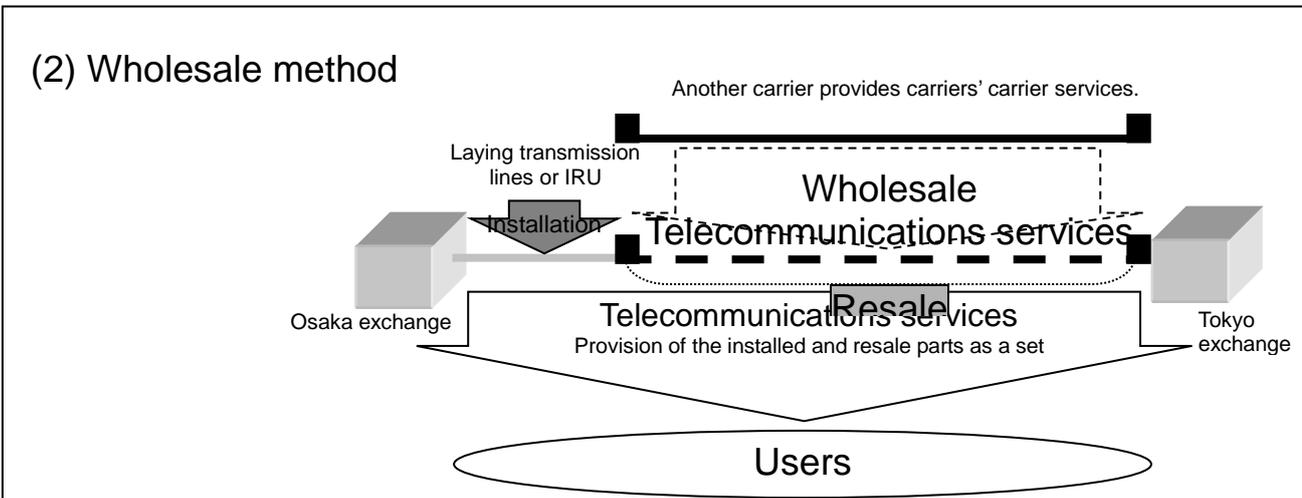
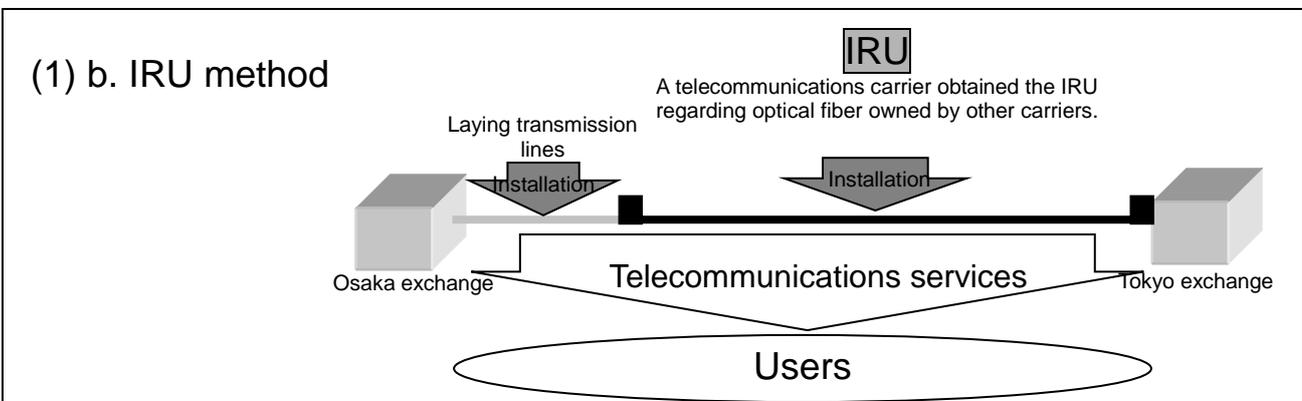
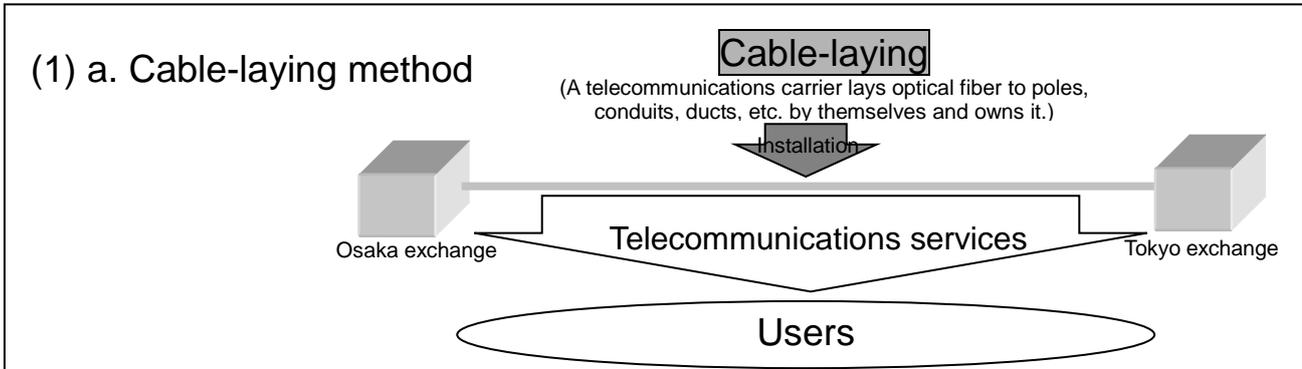
(3) Interconnection method

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.

* The consignment of business activities method, in which outsourcing a part of telecommunications work to others has been abolished since the revision of the Telecommunications Business Act, which came into force on April 1, 2004. Therefore, this method cannot be adopted now. However, the construction of networks in an equivalent manner will be possible by receiving telecommunications services as explained in (2).

Image of Construction of Networks by Telecommunications Carriers

In the case of procurement of optical fiber used for specific sections by Telecommunications Carriers



4. Range of Installation Areas of Telecommunications Circuit Facilities and Scope of Necessary Procedures

- (1) The following two types of procedures are specified according to the range of installation areas of telecommunications circuit facilities for those who intends to operate telecommunications business (Article 9 of the Act, Article 16, paragraph (1) of the Act, and Article 3, paragraph (1) of the Enforcement Regulations of the Telecommunications Business Act (Ministry of Posts and Telecommunications Ordinance No. 25 of 1985, hereinafter referred to as “the Enforcement Regulations”).

Telecommunications business ⇒ Telecommunications business requiring registration (registration system) ⇒ Telecommunications business that requires notification (notification system)
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- (2) Specifically, the registration of a telecommunications carrier (Article 9 of the Act) is required if the telecommunications carrier intends to install telecommunications circuit facilities in excess of criteria 1) or 2) as specified below in accordance with MIC’s ordinance. The foregoing shall apply to cases where telecommunications circuit facilities are installed in accordance with the IRU.

- 1) An area for the installation of terminal system transmission line facilities (referred to terminal facilities or transmission line facilities connected to in-house telecommunications facilities) shall be within a single municipality (or within a single special ward, or a single ward or single special zone in the case of a government-ordinance-designated city).
- 2) Each section for the installation of relay system transmission line facilities (referred to transmission line facilities other than terminal system transmission line facilities) shall be within a single prefecture.

*A telecommunications carrier’s notification instead of registration shall be required in the case of installing telecommunications circuit facilities in excess of criteria 1) or 2), however, if the telecommunications circuit facilities fall under the category of radio equipment of a radio station that provides radio communications services in addition to basic broadcasts prescribed in Article 7, paragraph (2) of the Radio Act.

- (3) Notification shall be required for the following telecommunications carriers (Article 16 of the Act).
- (i) Those who intend to operate the telecommunications business by installing telecommunication circuit facilities that satisfy both criteria 1) and 2) in (2) above.
 - (ii) Those who intend to operate telecommunications business without installing their own telecommunications circuit facilities.
- (4) Telecommunications carriers that install telecommunications circuit facilities and provide telecommunications services can obtain accreditation from the Minister of Internal Affairs and Communications under the provisions of Article 117 of the Act regardless of the registration or notification of the telecommunications carriers. Telecommunications carriers that have obtained approval (hereinafter referred to as “approved telecommunications carriers”) have the privilege of being able to set usage rights on others’ land under certain requirements. (For details, see [*Particulars*] 1. *Laying transmission lines.*)

[Particulars]

1. Laying transmission lines

(1) Outline

A method of telecommunications carriers to lay and own optical fiber etc. is a basic method for establishing telecommunications circuit facilities.

(2) Requirements for agreement

- 1) In the case of laying optical fiber etc., it is necessary, in almost all cases, to use land, buildings, poles, conduits, ducts, etc., owned by others.
- 2) To this end, in principle, a telecommunications carrier is responsible for negotiating individually with owners of the said land, etc. Accordingly, rights to use the said land etc. shall be established under an agreement between the parties concerned.
- 3) However, telecommunications business provides telecommunications services indispensable to people's daily life and socioeconomic activities. Therefore, upon laying optical fiber etc., if telecommunications carriers are forced to take a detour caused by the denial of some land owners, their business operations will be seriously hindered therefrom.
- 4) Accordingly, under certain conditions, the rights of approved telecommunications carriers to use land etc. owned by others are set forth (Article 128, et sequentia of the Act).
- 5) In order to facilitate line laying and promote the development of optical fiber networks necessary for building an ultra high-speed Internet network by approved telecommunications carriers, MIC set forth the Guidelines for Use of Utility Poles, Ducts, Conduits, Etc., which came into effect in April 2001.
- 6) As for approved telecommunications carriers, permission for road occupancy (Article 32 of the Road Act) shall be given if certain requirements are met (obligatory occupation: Article 36 of the same Act), and the occupation of a multi-purpose underground tunnel shall be allowed as well.
- 7) These favorable treatments granted to approved telecommunications carriers are called generically as public utility privileges.

(3) Treatment pertaining to nonapproved telecommunications carriers

Nonapproved telecommunications carriers can lay and own optical fiber etc. but no public utility privilege shall be applied to them.

2. IRU

(1) Outline

- 1) Telecommunications carriers may install transmission line facilities by acquiring the IRU concerning optical fiber etc. owned by others (including non-telecommunications carriers) in specific sections, in addition to laying and owning the optical fiber etc.
 - 2) If a contract pertaining to the IRU meets the requirements of the IRU (see Reference), it shall be deemed that the IRU has been set forth (i.e., the status under which a telecommunications carrier who acquires the IRU continuously may control and manage the optical fiber etc.).
 - 3) If the owner of optical fiber etc. provides the said optical fiber etc. under a contract without meeting the IRU requirements, the said owner shall obtain follow the procedures for registration or notification or telecommunications business (Article 9 and Article 16 of the Act) because the said owner virtually provides telecommunications services (so-called “dark fiber lease”).
- * The outline of the structure of facilities to be procured by the IRU from others, the name of the other party, etc. shall be described in form 3 (Network Structure Diagram) specified by the Enforcement Regulations (Note 2 of Form 3 specified by the Ordinance for Enforcement).

(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 telecommunications carriers, such as telecommunications carriers’ procedures for changing the outline of telecommunications facilities and business areas (Article 13 and Article 16, paragraph (3) of the Act) and obligation to maintain conformity with technical conditions (Article 41 of the Act) shall apply.

(3) Requirements for agreement

The IRU is to be set with the consent of parties concerned. Therefore, the provision of optical fiber etc. under the IRU is not mandatory by law.

3. Wholesale

(1) Outline

- 1) A telecommunications carrier, like a general user, may be provided with telecommunications services from other telecommunications carriers and resell the telecommunications services to its users (the Wholesale method).
- 2) As a result of the revision of the Telecommunications Business Act, which came into effect on April 1, 2004, telecommunications carriers' obligation to prepare and notify contracts has been abolished for telecommunications services other than basic telecommunications services and designated telecommunications services. It is also possible to conclude contracts individually by specifying fees and other provision conditions.
(In addition, it will be possible to provide designated telecommunications service with the absence of security tariffs if there is a separate agreement with the counterparty on the provision of the designated telecommunications services (Article 20, paragraph (5) of the Act)).

(2) Comparison with installation methods

- 1) If a telecommunications carrier provides services in the wholesale method, the telecommunications carrier needs to use the telecommunications facilities of another telecommunications carrier, where the telecommunications carrier's obligation to take a procedure for business area change shall apply (Article 13 of the Act and Article 16, paragraph (3) of the Act).
- 2) The telecommunications carrier, however, has not installed the said telecommunications facilities (i.e., the telecommunications facilities of the different telecommunications carrier) in the case specified in the preceding paragraph, to which neither the telecommunications carrier's procedures for the changes (Article 13 and Article 16, paragraph (3) of the Act) nor obligation to maintain conformity with technical conditions (Article 41 of the Act) shall apply.
* The outline of the structure of facilities to be procured by the IRU from others, the name of the other party, etc. shall be described in Form 3 (Network Structure Diagram) specified by the Ordinance for Enforcement (Note 2 of Form 3 specified by the Ordinance for Enforcement).

(3) Requirements for agreement

1) Obligation to provide services

- i. Telecommunications carriers' obligation to provide services (Article 25, paragraph (1) and (2) and Article 121 paragraph (1)) shall apply to telecommunications carriers that provide telecommunications services relating to basic telecommunications services, designated telecommunications services, and approved telecommunications services. Such telecommunications carriers shall not refuse telecommunications services without due reasons.
- ii. Telecommunications carriers shall not engage in any unfair and discriminatory treatment in providing telecommunications services regardless of whether the service obligation is applicable to such telecommunications services or not (Article 6 of the Act). If a telecommunications carrier is deemed to be doing unfair and discrimination, the telecommunications carrier may be subject to a order to improve business Activities issued by the Minister for Internal Affairs and Communications (Article 29, paragraph 1, item ii of the Act).

2) Order and award on the provision of wholesale services

- i. If a telecommunications carrier's offer to negotiate and conclude a contract of wholesale services is broken off or rejected by another telecommunications carrier, the Minister for Internal Affairs and Communications may order the telecommunications carrier breaking off or rejecting the negotiation to start or resume the negotiation (Article 38, paragraph (1) of the Act to be applied mutatis mutandis in Article 39 of the Act).
- ii. In the case of a telecommunications carrier seeking to conclude a contract of wholesale services with another telecommunications carrier, their negotiation may not reach an agreement with respect to conditions, such as the amount of money to be borne by them and the conditions of providing the services. In such a case, they may apply for the award of the Minister for Internal Affairs and Communications (Article 35, paragraph (3) of the Act to be applied mutatis mutandis in Article 39 of the Act).
- iii. In addition to the case specified in ii., if there is an order as specified in i., their negotiation may not reach an agreement with respect to conditions,

such as the amount of money to be borne by them and the conditions of providing the services. In such a case, they may apply to the Minister for Internal Affairs and Communications for award (Article 35, paragraph (4) of the Article to be applied mutatis mutandis in Article 39 of the Act).

- * The revised Telecommunications Business Act, which came into effect on May 21, stipulates that Type I telecommunications carriers or Type II telecommunications carriers shall notify without delay if they provide wholesale services using Category I telecommunications facilities or Category II telecommunications facilities (Article 38-2 of the Act). The content to be notified shall be the service category and start date of wholesale services to be provided. If the service category and wholesale service providers fall under the conditions listed in the table of Article 25-7, No. 4 of the Enforcement Regulations, the wholesale service provider shall notify the Minister for Internal Affairs and Communications of the details of the provision conditions etc. (Article 25-7 through Article 25-7-4 of the Enforcement Regulations).

The content notified shall be summarized and announced by the Minister for Internal Affairs and Communications (Article 39-2 of the Act).

(4) Protection of general users

Telecommunications carriers need to comply with the following conditions to protect each general user regardless of whether services are provided in the wholesale method or not.

- Notification on the abolishment of business (Article 18 paragraph (3) of the Act)
- Explanation before concluding a contract (Article 26 of the Act)
- Document issuance after concluding a contract (Article 26-2 of the Act)
- Cooling-off system (Article 26-3 of the Act)
- Obligation to process complaints (Article 27 of the Act)
- Prohibition of misrepresentation and prohibition of continuous solicitation (Article 27-2 of the Act)
- Obligation to take measures, including guidance, for business brokers such as intermediary agents (Article 27-3 of the Act)

For details, refer to information on telecommunications service users (http://www.soumu.go.jp/main_sosiki/joho_tsusin/d_syohi/shohi.htm).

4. 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 method, 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 (the 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 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").
 - ii. A method that each carrier sets its own user charges for its telecommunications services provided.Usually, the method specified in i. is adopted.
- 4) In the case of the end-to-end price setting, one carrier adds two carriers' charges. Therefore, it seems difficult to tell the differences from the wholesale method. However, unlike the wholesale method, each carrier provides telecommunications services directly to users, wherein each carrier is responsible for contract fulfillment.

(2) Procedure for interconnection method

- 1) Neither telecommunications carriers' procedures for changes in telecommunications facilities in accordance with Article 13 and Article 16, paragraph (3) of the Act nor obligation to maintain conformity with technical conditions in accordance with Article 41, paragraph (1) of the Act shall apply to telecommunications carriers who have not installed the telecommunications facilities of different telecommunications carriers beyond the interconnection point.

2) If the service area expands as a result of interconnection, however, it may be necessary to change the business area based on Article 13 of the Act or Article 16, paragraph (3) of the Act. In the case of approved telecommunications carriers, procedures related to the name of the telecommunications carrier whose telecommunications facilities are connected and the point of interconnection may be required in addition to the change of the business area (Article 13, Article 16, paragraph (3), and Article 122 of the Act).

* Information on the telecommunications carrier, including the point of interconnection with telecommunications facilities of the telecommunications carrier and the name of the telecommunications carrier, shall be described in form 3 (Network Structure Diagram) specified by the Enforcement Regulations (Note 2 of Form 3 specified by the Ordinance for Enforcement).

(3) Requirements for agreement

1) Obligation to interconnect (Article 32 of the Act)

Telecommunications circuit facilities established by telecommunications carriers have strong public characteristics serving as a basis for people's lives and economic activities. Accordingly, mandatory duties are imposed on telecommunications carriers for their telecommunications circuit facilities to respond to the request of other telecommunications carriers to connect their telecommunications circuit facilities unless there are any due reasons for refusing it.

2) Designated telecommunications facilities

i. Category I telecommunications facilities (Article 33 of the Act)

The interconnection with telecommunications facilities installed by telecommunications carriers who possess a significant scale of subscriber lines is necessary for other telecommunications carriers to perform their telecommunications businesses and is essential to enhance convenience for users. Therefore, the telecommunications facilities installed by telecommunications carriers who possess 50% or more subscriber lines 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 telecommunications facilities (Article 34)

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. Therefore, telecommunications facilities owned by the said telecommunications carriers 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 of NTT East and NTT West are designated as Category I designated telecommunications facilities, and those of NTT DoCoMo, KDDI, SoftBank, and Okinawa Cellular Phone are designated as Category II designated telecommunications facilities (as of June 2016).

3) Order and award on interconnection (Article 35)

i. An obligation shall be imposed on telecommunications carriers to interconnect with other telecommunications carriers as described in 1) above. Therefore, if a telecommunications carrier breaks off or reject a request of another telecommunications carrier to negotiate an agreement of interconnection without due reasons, the Minister for Internal Affairs and Communications may order the said telecommunications carrier to start or resume the negotiation in response to a petition from the opposite telecommunications carrier (Article 35 Paragraph (1) of the Act).

ii. Moreover, if a telecommunications carrier breaks off or does not respond to a negotiation to conclude an agreement of interconnection offered by another telecommunications carrier, the Minister for Internal Affairs and Communications may order the said telecommunications carrier to start or resume the negotiation order, provided that specified requirements are met (Article 35, Paragraph (2) of the Act).

iii. If a negotiation between telecommunications carriers about the interconnection of telecommunications facilities fails to come to an agreement with respect to conditions, such as the amount of money to be borne by them and terms of interconnection, the telecommunications carriers may apply to the Minister for Internal Affairs and Communications

for award (Article 35 Paragraph (3) of the Act).

iv. In addition to the case specified in iii., if there is an order as specified in i. or ii, their negotiation may not reach an agreement with respect to conditions, such as the amount of money to be borne by them and the conditions of providing the services. In such a case, they may apply to the Minister for Internal Affairs and Communications award (Article 35, paragraph (4) of the Article).

[References]

Requirements for IRU

Requirement 1): Disability to terminate the agreement without consent of the telecommunications carrier that acquires the right to use.

If the owner of optical fiber etc. can unilaterally terminate such a contract without the consent of a telecommunications carrier that acquires the right to use the said optical fiber, etc., the contract cannot ensure that the telecommunications carrier controls and manages the said optical fiber etc. on a stable basis. The contract must explicitly confirm in writing that it cannot be terminated without the consent of the 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 the said optical fiber etc. may terminate the contract if the telecommunications carrier who has acquired the right to use the said optical fiber etc. defaults on obligations or otherwise breaches the contract, and still does not make payment or rectify the breach after a certain period of notification given to the carrier by the owner.

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 shall provide 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 telecommunications carrier; Second party: the owner of the facilities

Requirement 2): A reasonable charge for use set during the whole term of the agreement.

This requirement for usage charges ensures that the continuous control and management of optical fiber etc. cannot be obstructed by prohibitive charges that might be set forth in the middle of the term by the owner of the optical fiber 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 telecommunications carrier's right to use it could be taken away in the event that the third party exercises that security interest. Accordingly, the telecommunications carrier would not be able to control and manage the fiber cable etc. on a stable basis.

The above shall not apply if telecommunications carriers' stable control and management are deemed to be secured. In other words, it shall not apply if the setting of the third parties' security interests on telecommunications circuit facilities (such as communications satellites) is not normally feasible or there is a remarkably low possibility of the execution of the security interests within the contract period involving the disappearance of the telecommunications carriers' right to use.

Example of an IRU contract

(Conveyance of rights)

Article xx. Neither the first party nor the second party shall assign or sublease 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): Fulfillment of any one of the following requirements, (1), (2), and (3), about the term of the agreement, by which it is judged to be stable and steady.

- i. The period of use shall be ten years or more.
- ii. The agreement extends over more than a year, and both of the following conditions ,(A) and (B) ,should be confirmed on it. However,

in case the total term of the agreement which is continuously renewed exceeds a fairly long period of time (10 years are standard) like i. as a whole, the additional part of the agreement doesn't necessarily satisfy these two conditions.

(A). A provision of renewal of the agreement automatically.

(B). Disability to renew the agreement without consent of the telecommunication-carrier.

iii. Otherwise, the agreement should seem to have special situations similar to 1 or 2.

The requirements ensure that the telecommunications carrier can continuously control and manage the said optical fiber etc. during the period necessary for the said carrier to provide its services.

The contract period of use shall be set to ten years by referring to the legal depreciation period of optical fiber etc.

The conditions specified in ii. (B) do not mean that such a contract cannot include provisions that the owner of the optical fiber etc. may terminate the contract if the telecommunications carrier who has acquired the right to use said optical fiber 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.

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.

Q1. Do the business activities of the owner of optical fiber etc. fall under the scope of telecommunications services if the owner provides the optical fiber etc. to a telecommunications carrier in the IRU method?

A. No.

Q2. Is it possible for the owner of optical fiber etc. to provide some surplus cores out of a thread of fiber-optic cable to a telecommunications carrier in the IRU method?

A1. It is possible to provide surplus cores on a core-by-core basis.

2. The cores used by the owner and those provided in the IRU method, however, need to be identified.
3. As a matter of course, the owner of the cores cannot use the cores provided in the IRU method.

Q3. Is it possible for the owner of optical fiber etc. to provide the optical fiber etc. in the IRU method to others who will provide the optical fiber etc. to telecommunications carriers in the IRU method?

A. Yes.

Q4. Is it possible for the owner of optical fiber etc. to provide the optical fiber etc. in the IRU method to others who are not telecommunications carriers (e.g., local governments) and enable the said local governments, etc. to construct and run their private telecommunications networks by using the provided optical fiber etc.?

A1. Yes.

2. In that case, however, the said local governments, etc. shall be subject to the Wire Telecommunications Act because the said local governments, etc. install their private telecommunications networks (Article 3, paragraph (1) of the Wire Telecommunications Act).

Q5. Is it possible for the owner of optical fiber etc. to provide telecommunications carrier with the optical fiber etc. in the IRU method on a wavelength and/or band basis instead of a core basis?

A1. In the case of providing optical fiber etc. on a wavelength and/or band basis,

the owner is applied the Telecommunications Business Act and required to obtain registration as set forth in Article 9 of the Act or file a notification as set forth in Article 16 of the Act.

2. When providing optical fiber etc. on a wavelength and/or band basis, the owner of the said optical fiber etc. is considered to control and manage the entire transmission facilities, including wavelength division multiplexing (WDM) equipment for generating the wavelength and/or band.
3. Accordingly, the owner, not the telecommunications carrier with the IRU, is responsible for obtaining registration or filing notification of telecommunications business and for maintaining the conformance of the transmission circuit facilities with technical conditions for the prevention of damage to the facilities and the protection of the users' confidentiality of communication.