



NTT's Stance on the State of the NTT Act [2]

November 7, 2023

This is a translation of the original Japanese document.

NTT's Stance on Regulations that Prohibit NTT East/NTT West from Merging with NTT DOCOMO



- NTT East and West will continue to comply with the Telecommunications Business Act and other laws, regulations and rules⁽¹⁾, and provide access to networks and other services to other carriers in a fair manner.
- It is important for NTT East and NTT West to maintain and expand their businesses not only with NTT DOCOMO, but also with a wide range of other telecommunications carriers ⁽²⁾.
- **Therefore, there is no plan to integrate NTT East/NTT West and NTT DOCOMO.**

(1) NTT East and NTT West are designated as Category I Designated Telecommunications carriers under the Telecommunications Business Act (Article 33, paragraph (1)), and are prohibited from giving unfair preferential treatment to certain carriers (Article 30, paragraph(4)). NTT East and NTT West are also required to obtain approval from the Minister of Internal Affairs and Communications for the terms and conditions of provision and fees (connection terms and conditions, and connection fees) to other carriers who connect to NTT East/West (Article 33, paragraph (2)).

(2) Number of carriers connected to NTT East/NTT West: more than 100 each. Number of wholesale providers from NTT East/NTT West: over 600 each.

- Universal service obligations should be undertaken by the most appropriate business entity in the most appropriate manner for each region, using fixed, wireless, satellite or other methods for voice and data communications.
- To make this possible, the fixed-line telephone services obligation under the NTT Act should be incorporated into the universal service obligations for broadband services stipulated in the Telecommunications Business Act, in the same manner as in other major countries.
- If this were the case, then if the following conditions were met, NTT East and NTT West would be prepared to assume last resort obligation in areas where no other carrier agrees to do so.

Necessary conditions:

- ✓ Achieving a subsidy system that is sufficient but not excessive
 - ✓ Adopting flexible and cost-minimizing delivery methods, including mobile, satellite or other methods Etc.
- **Mr. Tsuneyuki Yamamoto, former Commissioner of the Cabinet Legislation Bureau and Justice of the Supreme Court, has commented that there would be no legal issue with imposing universal service obligation and establishing exit regulations on specific carriers under the Telecommunications Business Act.** (Attachment)

(Attachment) Comments on the Discussion of the Special Committee on Telecommunications Policy, MIC



This is a translation of the original Japanese text.

A look at the deliberations of the Ministry of Internal Affairs and Communications' Special Committee on Telecommunications Policy reveals a discussion based on misunderstandings of legislative theory.

For example, one committee member's opinion states that, "If the government designates telecommunications carriers as those with last resort obligation for universal broadband service, it will do so under the Telecommunications Business Act, which is not enforceable in designating NTT." However, in many cases business laws do impose legal obligations on specific business operators that meet certain requirements.

Therefore, if the Telecommunications Business Act designates that certain carriers must provide universal services if they "meet the requirements specified by a Cabinet Order as carriers that possess the equipment and materials necessary to provide nationwide basic telecommunications services," and devises a way to establish such requirements, it is conceivable that only NTT East and NTT West would be subject to this obligation to provide universal services.

Therefore, it is indeed possible to establish provisions for universal service under the Telecommunications Business Act without the NTT Act, and this is already common practice under business laws.

In addition, it is difficult to agree with the committee member's notion that "the Telecommunications Business Act is neutral" or that "the NTT Act is a law for a limited field." Since laws grant rights and impose obligations on persons within specific fields, it would be better for the public if, to the extent possible, specific fields were governed by a single law consistent with the scope of that law's purpose, so that the public can easily understand the relationship between the contents of the regulations.

November 2, 2023

Tsuneyuki Yamamoto, former Commissioner of the Cabinet Legislation Bureau and Justice of the Supreme Court

Investment

- Since the management system of mobile customer information and the core network are generally owned and managed by each mobile operator itself, if mobile operators' information and infrastructure are not protected, then the stable provision of communications to approximately 210 million mobile users cannot be ensured.
- In fact, there has been a case in which Russian industrial spies stole Softbank mobile infrastructure information and took it out of the country.
- From the viewpoint of economic security, it would be meaningless for only our company to be protected by the NTT Act, and consideration should be given to having major telecommunications carriers covered by the Foreign Exchange and Foreign Trade Act and other laws and regulations.
 - ⇒ **We believe that it is necessary to cover all major telecommunications carriers, and it is important to undertake a broad review of how to achieve this, including not only the Foreign Exchange and Foreign Trade, but also under the Telecommunications Business Act and other laws and regulations.**

- NTT East and NTT West intend to continue to provide fixed-line telephones using optical infrastructure (such as Hikari Denwa).
- On the other hand, we believe that, since the use of fixed-line telephones (telephone subscriber lines⁽¹⁾, etc.) that use metal infrastructure, which are currently subject to the universal service obligation, is declining,⁽²⁾ and given that metal infrastructure will inevitably degenerate, now is the appropriate time to discuss how universal services for telephones should be provided.
- When considering universal telephone services, including from the viewpoint of the burden on the public, it is necessary to ensure universal telephone services in areas including where fixed-line telephone business is unprofitable by introducing a cost-minimizing structure that includes not only optical lines, but also mobile, satellite and a variety of other methods.

(1) The Telecommunications Business Act defines the following services below as subject to the responsibility to ensure “the adequate, fair and stable provision of nationwide telephone services” as stipulated in the NTT Act, and Hikari Denwa, etc. provided by NTT East and NTT West are not included within the scope of universal services.

Scope of universal services for telephones, as defined in the Telecommunications Business Act:

- Telephone subscriber lines: Fixed-line telephone services provided using metal lines
- Hikari Kaisen Denwa: Fixed-line telephone services provided as an alternative to telephone subscriber lines in limited areas where fiber optics are more efficient than installing metal lines
- Wireless landlines: Wireless fixed-line telephone services provided as an alternative to telephone subscriber lines in areas where it is expensive to install and maintain metal lines, such as mountainous and remote island areas (to be provided in the future)
- Public telephones: Type I public telephones, public telephones for disasters Etc.

(2) The number of fixed-line telephones (telephone subscriber lines + ISDN) for NTT East and NTT West has declined from approximately 60 million lines at its peak to 13.5 million lines today, and is expected to decline to 5.0 million lines around 2035 and 2.3 million lines around 2045.

- When shares were allocated to the government along with the privatization, assets belonged to the government as the shareholder.
(Subsequently, when 2/3 ownership was transferred to the private sector, the corresponding asset was ultimately also transferred to private sector shareholders.)
- The United Kingdom, France and Germany had gone through asset successions as above in the past, and did away with special corporation laws. They have business laws similar to Japan that regulate fair and equitable facility rent.

(Reference) Regulatory Status in Major Countries

In major countries, special corporation laws have been repealed.

Universal services are regulated by business laws.

* No substantive regulatory items

| | | Japan (NTT) | US (AT&T) | UK (BT) | France (FT) | Germany (DT) |
|---|---|---|--|---|---|--|
| Special Corporation Law | | Yes | No | Yes→No* 〔 Only provisions related to property succession remain 〕 | Yes→No* 〔 Only provisions related to pensions associated with having been a government employee remain 〕 | Yes→No* 〔 Only provisions related to property succession and pensions associated with having been a government employee remain 〕 |
| Government Must Own Shares (Ownership Ratio:FY23) | | Yes (1/3 or more) (34.3%) | No (0%) | Yes→No (0%) | Yes→No (13.4%) | No (30.5%) |
| Approval for Appointment of Board Members/ Regulation of Foreign Directors | | Yes | No | Yes→No 〔 Approval for appointment of board members 〕 | Yes→No 〔 Approval for appointment of board members 〕 | Yes→No 〔 Approval for appointment of board members / Regulation of foreign directors 〕 |
| Obligation for Promotion and Spread of R&D | | Yes | No | No | Yes→No 〔 Responsibility for contributing to the promotion of research 〕 | No |
| Universal Services Obligation | Laws and regulations | 〔Fixed-Line Telephone〕 NTT Act and Telecommunications Business Act 〔Broadband〕 Telecommunications Business Act | business law | special corporation law ↓ business law | special corporation law ↓ business law | special corporation law ↓ business law |
| | Business Carriers of Last Resort | 〔Fixed-Line Telephone〕 NTT Act (NTT is assigned) 〔Broadband〕 No | business law 〔 In the event of an unsuccessful public offer, the state government assign an appropriate carrier 〕 | business law 〔Government assigns an appropriate carrier after publicly soliciting alternative proposals 〕 | business law 〔 In the event of an unsuccessful public offer, the government assign an appropriate carrier 〕 | business law 〔 In the event of an unsuccessful public offer, the government assign an appropriate carrier 〕 |
| Restrictions on Foreign Investment | Review for Each Investment 〔 Percentage of investment that may be subject to review:FY22 〕 | Foreign Exchange & Trade Act (10→1% or more) | foreign exchange & trade law (No Lower Limit) business law | foreign exchange & trade law (No Lower Limit) | foreign exchange & trade law (33→25→more than 10%) | foreign exchange & trade law (25→10% or more) |
| | Regulations for Total Volume of Investment | NTT Act | 〔 Exempt from total volume control if not detrimental to the public benefit, and individual assessment 〕 * Softbank's acquisition of Sprint also allowed it to acquire 100% of the shares | No | No | No |