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Telecommunications Ordinance 2004

INTERCONNECTION AND ACCESS TO TELECOMMUNICATIONS FACILITIES REGULATIONS  
2005

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Regulations made by the Governor in Council under section 64 of the Telecommunications Ordinance 2004

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SCHEDULE 1

Part 1

PRELIMINARY

**Citation and Scope Interpretation**

1. (1) These Regulations apply to the interconnection of public telecommunications networks and public telecommunications services and to access to telecommunications apparatus.
- (2) These Regulations apply to all carriers and to all service providers.
- (3) These Regulations may be cited as the Interconnection and Access to Telecommunications Facilities Regulations and shall come into operation on

**Interpretation**

2. In these Regulations unless the context otherwise requires –

“interconnection agreement” means an agreement between two licensees setting forth their respective rights and obligations with respect to providing direct interconnection between their telecommunications networks and telecommunications services;

“Ordinance” means the Telecommunications Ordinance 2004; and

“telecommunications facility” means a physical component of a telecommunications network, other than terminal equipment, including wires, lines, terrestrial and submarine cables, wave guides, optics or other equipment or object connected therewith, used for the purpose of telecommunications and includes any post, pole, tower, standard, bracket, stay, strut, insulator, pipe, conduit, or similar thing used for carrying, suspending, supporting or protecting the structure.

- (1) Unless otherwise specified, terms used in these Regulations shall have the meanings assigned to them under the Ordinance.

**General principles**

3. (1) Carriers and service providers are required to co-operate with each other in accordance with these Regulations, in order to enable them to provide integrated public telecommunications services throughout the Turks and Caicos Islands and to allow each end user of a public telecommunications network and public telecommunications service to communicate with any other end user of another public telecommunications network or public telecommunications service.

- (2) Interconnection shall be established and provided in accordance with interconnection agreements negotiated and agreed between the parties, and submitted to the Commission, pursuant to the Act and these Regulations.

**Functions of the Commission**

4. (1) The Commission shall, consistent with the Ordinance and these Regulations, encourage and, where appropriate, ensure, the adequacy of interconnection between public telecommunications networks and public telecommunications services in such a way as to –

- (a) promote efficiency;
  - (b) promote sustainable competition;
  - (c) give maximum benefit to end users; and
  - (d) provide that carriers and service providers are compensated for interconnection services.
- (2) The Commission may, to the extent necessary to ensure end-to-end connectivity –
- (a) impose the obligations on carriers and service providers as set forth in these Regulations, including, in justified cases, the obligation to interconnect their networks;
  - (b) establish technical or operational conditions to be met by carriers or service providers;
  - (c) resolve disputes with respect to the establishment of interconnection agreements and disputes regarding the interpretation and implementation of such agreements; and
  - (d) act on its own initiative or at the request of either of the parties involved in order to carry out the objectives of the Ordinance and ensure compliance with the Ordinance and these Regulations.

Part 2

OBLIGATIONS OF CARRIERS AND SERVICE PROVIDERS

**Duty to interconnect**

5. (1) Every carrier and service provider has a duty to interconnect with other carriers and service providers.

(2) For purposes of subsection (1), interconnection may either be direct or indirect, through the public telecommunications networks or public telecommunications services of other licensees.

(3) The duty to interconnect specified in subsection (1) obligates carriers and service providers to refrain from refusing, obstructing or in any way impeding, other than for the grounds set forth in section 22(2) of the Ordinance, as the Commission may determine, and justified in writing, the interconnection of another carrier or service provider entitled to obtain such interconnection.

(4) The duty to interconnect specified in subsection (1) includes the requirement that every carrier or service provider provide for the transmission and routing of the services of other carriers and service providers at any and all technically feasible points and that the facilities of the licensee requesting interconnection may be collocated with the facilities of the carrier or service provider required to offer interconnection, except to the extent that the Commission may otherwise determine.

(5) If both the carrier or service provider offering interconnection and the carrier or service provider seeking interconnection are not dominant in any market (including in voice termination), the

licensees may agree to interconnect, with respect to networks or services in such market, on any mutually agreeable terms consistent with their obligations under the Act, these Regulations and their respective licences.

(6) Any agreement governing direct interconnection between licensees shall be embodied in a written interconnection agreement.

(7) The Commission may require that a carrier or service provider, in fulfilling its duty to interconnect, undertake specific obligations to ensure that the interconnection provided by such carrier or service provider is fair, reasonable and timely, including the following:

- (a) each carrier or service provider that directly interconnects with another carrier or service provider shall take reasonable measures to ensure that the interconnection does not cause physical or technical harm to the other carrier's or service provider's telecommunications network;
- (b) each carrier or service provider must provide to another carrier or service provider with which it interconnects information within its possession that is necessary to allow such other carrier or service provider to provide accurate and timely billing services to itself, its affiliates or other carrier or service providers;
- (c) each carrier must make publicly available any protocols, key technologies or physical and logical interfaces of its network necessary to allow the development and interoperability of telecommunications services and, not less than six (6) months prior to deployment, any changes in logical or physical interfaces that could materially affect existing interconnection arrangements, unless otherwise exempted by the Commission;
- (d) each carrier or service provider must provide specified services needed to ensure interoperability of end-to-end services to users, including facilities for intelligent network services or roaming on mobile networks;
- (e) each carrier or service provider must, as determined by the Commission, provide access to operational support systems or similar software systems that are required to ensure interoperability of and fair competition in the provision of telecommunications services; and
- (f) parties to interconnection agreements shall have a duty to co-operate in good faith and in a commercially reasonable manner in implementing the terms thereof.

#### **Non-discrimination obligation**

6. (1) Every carrier and service provider must offer to provide and provide interconnection, and the elements thereof, to other carriers and service providers on the basis of terms and conditions that are non-discriminatory, including with respect to rates and quality of service.

(2) At a minimum, the obligation set forth in subsection (1) requires that interconnection and the elements thereof be provided in a manner that is at least equal in both rates and quality to that provided by the carrier or service provider to its own business units or to any subsidiary or affiliate, or to any other party to which interconnection is offered or provided.

(3) Every carrier and service provider must offer to provide and provide interconnection on a timely basis not to exceed 90 days subject to section 8 , after requested by another licensee, and on the basis of terms and conditions that are transparent and reasonable, having regard to economic feasibility.

(4) Interconnection must be provided without regard to the types of users to be served or the types of services to be provided by the carrier or service provider requesting interconnection.

(5) Once a carrier or service provider concludes an interconnection agreement, or is subject to an interconnection agreement required or determined by the Commission pursuant to section 10, it must

- (a) offer the terms and conditions of such an agreement to any other carrier or service provider requesting interconnection; and
- (b) offer the terms and conditions of such an agreement, upon request, to any carrier or service provider with which it has an existing interconnection agreement, except to the extent that it can demonstrate to the Commission that subsections (1) and (2) would not be violated by a refusal to offer such terms and conditions to such carrier or service provider.

#### **Confidentiality obligations**

7. (1) Except as permitted under the terms of an applicable interconnection agreement, every carrier and service provider must protect from disclosure any confidential, proprietary or competitive information (including, but not limited to, customer orders, market forecasts, plans for development of new services, network plans, current or proposed business plans, and new customers) provided by another carrier or service provider received in the course of negotiating or implementing an interconnection agreement.

(2) All information disclosed pursuant to subsection (1) must be kept in confidence by the receiving party and may, subject to such commercial conditions and exceptions as are set out in a non-disclosure or interconnection agreement between the parties, be used by such party, and shared with its (and any of its affiliates') employees, agents and contractors, only for the provision of the specific services related to interconnection that have been requested.

(3) Every carrier and service provider receiving confidential or proprietary information pursuant to subsection (1) shall take appropriate measures to ensure that the information is not disclosed to affiliates or third parties, or used for the development or marketing of other telecommunications services or equipment by such carrier or service provider, or by its affiliates or third parties, other than as permitted by subsection (2).

### Part 3

#### REFERENCE INTERCONNECTION OFFER

##### **Requirement to publish a reference interconnection offer**

8. (1) Every carrier or service provider requested subject to these Regulations must make publicly available its standard interconnection agreement or a reference interconnection offer and, in any event, shall, at a minimum, provide such offer within thirty (30) days of its receipt of a request for such offer from another licensee.

(2) Notwithstanding subsection (1), any dominant carrier or dominant service provider shall prepare and publish its reference interconnection offer within thirty (30) days of its grant of licence.

(3) A reference interconnection offer must be consistent with the Ordinance, these Regulations and the offeror's licence and, except as the Commission may instruct or authorize the Commission, shall contain the following information:

- (a) The technically feasible points at which interconnection is permitted at no additional charge and the means by which interconnection will be achieved. Every license will have to permit interconnection at the host switch as part of its basic interconnection service offering.
- (b) The additional charges to the requesting party for interconnection at points other than those set out in clause (a).
- (c) The elements of the interconnection service and its constituent elements, including signaling, transport, the transfer of calling line identification information and switching between the point of interconnection and end users.
- (d) Rates or pricing formulae for each feature, function or facility that the offeror is required to offer pursuant to the Act, these Regulations and its licence.
- (e) Other commercial terms and conditions applicable to the offering of the elements of the interconnection service.

(4) In addition to the information required by subsection (3), the reference interconnection offer of a dominant carrier or service provider must –

- (a) list and describe the unbundled network elements and services that will be provided to interconnecting parties, as further specified in section 16;
- (b) without limiting clause (a), unless the Commission, on application of such dominant carrier or service provider, determine to the contrary, offer access to local loops and to non-voice band frequency spectrum of a local loop, in the case of shared access to the local loop;
- (c) include information concerning the locations of physical and logical access sites in specific parts of the network;
- (d) as determined by the Commission, provide technical conditions relating to access and use of local loops, including the technical characteristics of the twisted metallic pair in any local loop;
- (e) describe any operational and technical requirements with which an interconnecting party must comply in order to avoid harm to the offeror's network;
- (f) as determined by the Commission, set out the ordering and provisioning procedures and any usage restrictions with respect to local loops and any other elements of the interconnection service;

- (g) set out the conditions for access to operational support systems, information systems or databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing, unless the Commission, on application of such dominant or service provider, shall determine that such access is not required;
- (h) describe how information will be provided (such as call type, duration and points of origination and termination) to allow the interconnecting party to bill for telecommunications services; and
- (i) provide (1) the lead times for responding to requests for supply of services and facilities; (2) service level agreements, including with respect to fault resolution, procedures to return to a normal level of service and quality of service parameters; and (3) terms with respect to each of the foregoing.

#### Part 4

### INTERCONNECTION AGREEMENTS

#### **Negotiating interconnection agreements**

9. (1) Upon receipt of a request for interconnection, a carrier or service provider must provide its reference interconnection offer as provided in section 8.

(2) The reference interconnection offer shall be provided without charge to any carrier or service provider requesting interconnection.

(3) The party requesting interconnection shall, simultaneously with such request, notify the Commission of such request and shall provide to the Commission any additional information specified.

(4) The request from the party requesting interconnection shall include (a) reference to the requesting licensee's licence; (b) a technical description of the requested services; (c) the intended point of interconnection; the date on which interconnection is intended to commence; and (d) the projected quantity or volume of services required, based on a forecast of three (3) years or of some other period if the carrier or service provider is unable to provide such three (3)-year forecast.

(5) The party offering interconnection and the party requesting interconnection shall, promptly upon the offeror's receipt of the request, begin exchanging information and negotiating in good faith with the objective of concluding an interconnection agreement.

(6) Good faith negotiations require, at a minimum, adherence by the parties to the following timetables:

- (a) Upon receipt of a request for interconnection, a carrier or service provider shall promptly consider and analyze each such request and shall acknowledge receipt within ten (10) days.
- (b) If the information provided by the party requesting interconnection is deemed inadequate or insufficient by the offeror, then the offeror shall seek additional information from the requesting party as soon as commercially reasonable.

- (c) Unless there are exceptional circumstances, the offeror shall notify the requesting party of such additional information as it requires within twenty (20) days of receipt of the initial request for interconnection.
- (d) The offeror shall provide a complete response to the request for interconnection within thirty (30) days of the receipt of the later of the date of the initial request or such additional information as the offeror may have requested.
- (e) In exceptional circumstances, the period specified in clause (d) may be extended for another thirty (30) days, provided that the offeror shall so notify the Commission.
- (f) If the offeror is unable to respond to the request for interconnection by the end of such sixty (60)-day period, it shall provide, on the date on which such period expires, a written statement as to the reasons therefore to the Commission and to the party requesting interconnection.

**Contents of interconnection agreements**

10. (1) Pursuant to section 23 of the Ordinance, unless the parties to an interconnection agreement otherwise agree, such an agreement shall address the following matters:

- (a) technical characteristics and location of the point(s) of interconnection;
- (b) capacity levels;
- (c) service levels;
- (d) forecasting;
- (e) ordering and provisioning;
- (f) provision of network information;
- (g) information handling and confidentiality;
- (h) rates;
- (i) payment procedures;
- (j) fault detection and repair;
- (k) provision for breaches;
- (l) amendments; and
- (m) suspension, termination and duration.

**Disputes regarding interconnection and interconnection agreements**

11. (1) Where one or both of the two parties to the negotiation conclude that a dispute has arisen between themselves with respect to any aspect of interconnection, then, pursuant to section 24 of the Ordinance, either party may request that such dispute be submitted to the Commission, or the Commission may instruct that the parties involved in the dispute refer the dispute to it, for resolution in accordance with the Administrative Procedure Rules or such other procedures as the Commission may adopt specifically for, and given the nature of, the particular dispute.

(2) A dispute, for purposes of subsection (1), may include, but is not limited to –

- (a) a party's failure to respond to a request for interconnection or to negotiate in good faith, where a failure to negotiate in good faith includes, but is not limited to, any party taking a position with respect to a term and condition of interconnection that is not consistent with the Ordinance, these Regulations or its licence;
- (b) any express or implied refusal to provide interconnection (including as specified in section 5(3) and section 6;
- (c) a party's inclusion in a standard interconnection agreement or a reference interconnection offer of any terms and conditions that are inconsistent with the Ordinance, these Regulations or its licence;
- (d) a disagreement with respect to the costs of interconnection, whether charges sought to be recovered in an interconnection agreement relate to ongoing costs of inter-operability, within the meaning of section 25(1) of the Ordinance, whether a cost is a non-recurring or recurring cost or a cost that varies with usage, and what constitutes a cost-oriented usage based rate based upon the licensee's costs of providing interconnection, within the meaning of section 25(4) of the Ordinance;
- (e) a failure by the parties to conclude promptly an interconnection agreement; and
- (f) a disagreement with respect to the price or any other technical, commercial or other term and condition for any element of interconnection that the parties have not been able to resolve within a commercially reasonable time.

(3) In submitting disputes to the Commission, the parties shall adhere to the following timetables:

- (a) The party intending to submit the dispute shall notify the other party of its intention to do so fifteen (15) days prior to the date on which it makes its formal submission to the Commission.
- (b) At the expiry of the period specified in clause (a), the submitting party shall lodge a petition with the Commission to resolve such dispute, with a copy of the petition delivered to the other party to the dispute.

- (c) The petition to which clause (b) refers shall include a statement of facts, a summary of the issues in dispute, each party's position as to such issues in dispute, evidence that the parties have attempted to commercially resolve the dispute between them (including summaries of correspondence, minutes of meetings and other information) and a summary of issues that were previously in dispute but have been resolved, including the resolutions thereto.
- (d) Within fifteen (15) days of receiving one party's written petition and all accompanying evidence in support thereof (which period may be extended by the Commission for good cause shown upon application by the other party), the other party may lodge with the Commission a counterpetition containing arguments in its defense, including its views, if any, on why the Commission should not intervene to resolve the dispute, along with evidence in support thereof.
- (e) The Commission will determine whether and to what extent it is appropriate to resolve the dispute and shall notify the parties whether it will or will not resolve the dispute.
- (f) To facilitate investigation and resolution of the dispute by the Commission, either party may be asked by the Commission to provide additional information or explanations beyond the initial petition and counterpetition and any report or information required from one party by the Commission shall be provided to the other party.
- (g) Information in a petition, counterpetition or otherwise submitted to the Commission shall be marked as confidential if the submitting party desires that such information not be disclosed to the other party and shall be subject to section 7 of the Ordinance.
- (h) By no later than thirty (30) days after the receipt of the petition, the Commission shall endeavour to have completed its deliberation and render a Final Order, with the Commission having the discretion to extend such period in light of the complexity of the matter or where additional information is required.
- (i) Notwithstanding paragraph (h), where appropriate, the Commission may issue a Preliminary Order setting out its preliminary determination and its decision on how matters in dispute shall be resolved.
- (j) Either party to the dispute may, within fifteen (15) days of the issuance of the Preliminary Order, request that the Commission reconsider one or more elements of such Preliminary Order, setting forth its reasons as to why the Commission should modify its Preliminary Order.
- (k) Within ten (10) days of a request for reconsideration submitted pursuant to clause (j), the other party to the dispute may respond and provide reasons as to why modification of the Preliminary Order is not required.
- (l) The Commission may only modify the Preliminary Order in response to a request for reconsideration submitted pursuant to clause (j) if there are compelling reasons to do so.

- (m) The Commission shall endeavour to issue a Final Order by no later than fifty (50) days after its Preliminary Order.
  - (n) In issuing a Preliminary Order and a Final Order, the Commission shall consider the information and arguments submitted by the parties, as well as any other matter that the Commission deems relevant.
  - (o) Where necessary, the Commission may require a party to provide or continue to provide the relevant service(s) under the reference interconnection offer, or the interconnection agreement, as the case may be, pending the issuance of a Final Order.
  - (p) The Commission shall publish a notice in the *Gazette* that it has issued a Preliminary Order or a Final Order and that, where the dispute involves a dominant carrier or service provider, such documents are, subject to section 7 of the Ordinance, available for public inspection, free of charge, at the offices of the Commission.
- (4) Any decision rendered by the Commission pursuant to this section 11 shall be binding on the parties.
- (5) The procedures set forth in this section 11 are not intended to displace the dispute resolution procedures set forth in an interconnection agreement.
- (6) Notwithstanding subsection (5), if the parties to an interconnection agreement agree to refer a dispute arising under such agreement to the Commission, the Commission may, at its discretion, mediate or render a binding determination with respect to the dispute in accordance with the procedures set forth in subsection (3), as such may be modified by the Commission or as the Commission may otherwise establish for such purpose.

### **Submission to the Commission**

12. (1) Within twenty-eight (28) days after the parties to a negotiation regarding interconnection have concluded an interconnection agreement, the carrier or service provider that responded to the initial request for interconnection shall submit a copy of such agreement to the Commission.
- (2) Where an interconnection agreement submitted pursuant to subsection (1) includes one party that is dominant, the Commission shall publish a notice in the *Gazette* of such receipt and that the agreement is available for public inspection, free of charge, at the offices of the Commission.
- (3) Notwithstanding subsection (2), the Commission will not disclose information respecting the interconnection agreement for which disclosure is proscribed by section 7 of the Ordinance.
- (4) To verify compliance with these Regulations, the Commission will review an interconnection agreement or any modification thereof that is submitted to it pursuant to subsection (1) or section 13 within thirty (30) days of such submission, which period may be extended for good cause.
- (5) The Commission shall issue a Preliminary Order within twenty (20) days of submission to it of a notice with respect to one party's unilateral suspension or termination of an interconnection agreement, pursuant to section 13, authorising or declining to authorise such suspension or termination, which period may be extended for good cause.

**Modification, suspension or termination of interconnection agreements**

13. (1) The parties to an interconnection agreement may mutually agree to modify, suspend or terminate such agreement.

(2) Where modifications to an interconnection agreement are material, or where the interconnection agreement is to be suspended or terminated by mutual agreement, the parties shall notify the Commission and shall inform the Commission of the reasons for taking such action.

(3) If the interconnection agreement includes provisions pursuant to which its unilateral suspension or termination by one party would be permitted –

- (a) the party seeking to suspend or terminate the agreement in accordance with such provisions shall so notify both the Commission and the other party no less than twenty (20) days prior to the effective date of such suspension or termination; and
- (b) such suspension or termination will become effective in accordance with such notice unless the other party applies to the Commission for relief prior thereto and the Commission issues a Preliminary Order preventing such suspension or termination.

**Part 5****INTERCONNECTION RATES****Interconnection rates**

14. (1) Every carrier and service provider shall provide interconnection at rates that are arrived at in a transparent manner subject to the provisions of any interconnection agreement or the Ordinance regarding the confidentiality of costs or other commercial information.

(2) Rates for interconnection established by carriers and service providers that are not dominant shall not be subject to regulation, except as authorised or required by the Ordinance, these Regulations or as otherwise determined by the Commission.

(3) Every dominant carrier and dominant service provider shall provide interconnection at rates that are cost-oriented and, where expressly authorized by the Commission, that may permit the recovery of the costs of providing access.

(4) For purposes of these Regulations and for purposes of sections 23 and 24 of the Ordinance, rates are “cost-oriented” if the carrier’s or service provider’s charges for interconnection do not exceed the stand-alone cost of providing the service and are not lower than the long-run average incremental costs of providing the service, where –

- (a) “stand-alone cost” means the cost of providing a service independently of providing any other service or services; and
- (b) “long-run average incremental costs” means the costs incurred by providing a service in addition to other service or services already provided.

(5) No dominant carrier or service provider shall charge, for any combination of interconnection services, a price that exceeds the stand-alone costs of providing the combination of interconnection services or that falls below the sum of the individual interconnection services' long-run average incremental costs.

(6) Without regard to section 15, until such date as the Commission shall announce, a carrier or service provider that is dominant in the market for interconnection services as of the effective date of these Regulations may use a cost accounting method of its choosing for ensuring that its charges for interconnection are cost-oriented.

(7) Upon request of the Commission, a carrier or service provider shall supply its costs with respect to the network elements specified in and pursuant to section 17 for purposes of verifying that its rates for interconnection, and other contributions or charges levied or allowed by the Commission, comply with this section 14.

### **Interconnection rate methodology**

15. (1) Except as provided in section 14(6), the Commission shall determine the methodology to be used for determining whether a carrier's or service provider's rates are cost-oriented.

(2) The Commission shall apply the following principles in establishing the methodology to which subsection (1) refers –

- (a) costs shall be borne by the carrier or service provider whose activity caused such costs to be incurred, except that ongoing costs of inter-operability shall be borne equally by both the carrier or service provider offering interconnection and the carrier or service provider seeking interconnection;
- (b) non-recurring costs shall be recovered through non-recurring rates and recurring costs shall be recovered through recurring rates;
- (c) costs that do not vary with usage should be recovered through non-usage sensitive rates and costs that vary with usage shall be recovered through usage-sensitive rates;
- (d) rates shall permit the recovery of a reasonable rate of return for that carrier or service provider on the capital employed, all attributable operating expenditures, depreciation and a proportionate contribution toward such carrier's or service provider's fixed and common costs; and
- (e) the burden of proof that rates are derived from costs shall lie with the carrier or service provider.

### **Part 6**

#### **ADDITIONAL OBLIGATIONS OF DOMINANT CARRIERS AND SERVICE PROVIDERS**

##### **Network unbundling obligation**

16. (1) Every dominant carrier or service provider shall disaggregate its network or service and, in its reference interconnection offer, offer individual network elements, as specified in section 17, and

services at rates that are cost-oriented and that are established in accordance with these Regulations and as the Commission may establish from time to time.

(2) Every dominant carrier or service provider shall permit other carriers or service providers to have non-discriminatory access to telephone numbers, operator services, directory assistance and directory listing services without unreasonable delay, and to such other information and services as the Commission may require.

**Network elements**

17. (1) Every dominant carrier or service provider is required to provide to other carriers or service providers requesting interconnection at least the following individual network elements, as well as other essential elements, as determined by the Commission, in markets in which the carrier or service provider is dominant –

- (a) access lines;
- (b) domestic switching of calls carried by such carrier or service provider;
- (c) domestic transmission of calls carried by such carrier or service provider;
- (d) international switching of calls carried by such carrier or service provider;
- (e) international transmission of calls carried by such carrier or service provider;  
and
- (f) transiting between domestic carrier and service providers.

(2) The Commission may require a dominant carrier or service provider to supply, subject to the provisions of section 7 of the Ordinance, its costs with respect to the network elements it is required to provide pursuant to subsection (1).

**Rate offerings**

18. Every dominant carrier or dominant service provider shall, at a minimum and as otherwise required by the Commission, offer to third parties unbundled, cost-oriented rates for terminating domestic and international calls on its domestic network, which network includes the elements listed in clauses (a)-(c) of section 17(1).

**Mobile carrier termination**

19. (1) A carrier that is licensed to own and operate a mobile telecommunications network is presumed to be dominant in the market for wholesale mobile voice termination services over such network, except insofar as the Commission, upon demonstration by such carrier, determines otherwise.

(2) Except as modified by the Commission, a carrier described in subsection (1) may not charge an interconnecting carrier or service provider a rate for terminating voice telephone calls on such carrier's mobile telecommunications network that exceeds U.S. \$0.15 per minute (adjusted pro rata for units of less than a minute).

(3) In accordance with section 14, a carrier described in subsection (1) shall submit such information, including with respect to such carrier's costs, as the Commission may request demonstrating that any rates that such carrier charges for wholesale mobile voice termination services over its own mobile telecommunications network are cost-oriented –

- (a) if and as such carrier has more than a 33% share of the users in the retail mobile voice services market; and
- (b) whenever the Commission may otherwise request.

(4) Any carrier or service provider that believes that a carrier described in subsection (1) is charging it a rate for terminating voice telephone calls on such carrier's mobile telecommunications network that does not comply with section 14(3) and that is unable to negotiate a cost-oriented rate with such carrier may submit the dispute to the Commission in accordance with section 11.

(5) Notwithstanding any other requirements of the Ordinance or the Regulations, a service provider may, in establishing rates charged to an end user, take into account the costs of payments made directly or indirectly to other carriers or service providers for interconnection services, including the rates charged by such other carriers or service providers for wholesale mobile voice termination services, and it may vary the rates it charges to an end user to the extent that there are, and in proportion to, differences in the rates that such provider directly or indirectly pays to any carrier described in subsection (1) for interconnection to such carrier's mobile telecommunications network.

#### Part 7

### ACCESS TO TELECOMMUNICATIONS FACILITIES

#### **Provision of access**

20. (1) A carrier shall provide other carriers with access to all telecommunications facilities that it owns or controls on a timely basis, with such access not to be unreasonably withheld, as may be further determined by the Commission.

(2) A carrier may deny access to telecommunications facilities only for reasons of safety, security, reliability or difficulty of a technical or engineering nature.

#### **Negotiating access to telecommunications facilities**

21. (1) Pursuant to section 20, every carrier must offer to provide and provide access to telecommunications facilities on a non-discriminatory and equitable basis, including with respect to rates, location and other commercial matters.

(2) Prices for access to and use of telecommunications facilities may be priced on an individual basis, but must be non-discriminatory, just, reasonable and based on the costs of the owner of the telecommunications facilities.

(3) Upon receipt of a request for access to telecommunications facilities, a carrier must promptly provide the terms and conditions for such access.

(4) The party offering access and the party requesting access shall, promptly upon the receipt of the request for access, begin exchanging information and negotiating in good faith with the objective of concluding an agreement to provide access to the requested telecommunications facilities.

(5) Where one or both of the two parties to a negotiation for access to telecommunications facilities conclude that a dispute has arisen between themselves, then either party may submit such dispute to the Commission for resolution in accordance with such procedures as the Commission may adopt.

(6) Pending the resolution of any dispute, the Commission may order sharing of telecommunications facilities on an interim basis.

### **Sharing of telecommunications facilities**

22. (1) The Commission may require a carrier to provide collocation or other forms of sharing of telecommunications facilities on the basis of commercially negotiated rates and other terms and conditions.

(2) Where carriers are not able to reach an agreement regarding compensation for the sharing of telecommunications facilities, the Commission will establish rates based on costs, where appropriate.

(3) In resolving disputes pursuant to section 20(5) and in considering whether to impose collocation or sharing requirements in accordance with subsection (1), the Commission shall endeavour to take into account –

- (a) the reasonably anticipated requirements of the carrier;
- (b) any issues relating to safety, security, reliability or difficulty of a technical or engineering nature;
- (c) the technical and economic viability of requiring that the requesting party use or install other telecommunications facilities;
- (d) the initial investment of the owner of the telecommunications facilities;
- (e) the costs of duplicating the telecommunications facilities;
- (f) other public interest considerations, such as the environmental impact of deploying certain types of telecommunications facilities by multiple carriers; and
- (g) the need to promote and safeguard competition.

(4) The Commission may adopt such procedures, including those adapted from the procedures set forth in section 11, as it deems appropriate for mediating and resolving disputes regarding rates, terms and conditions of access to telecommunications facilities.

(5) Except as the Commission may determine in accordance with subsection (3), a dominant carrier must –

- (a) allow another carrier to collocate its facilities in buildings housing any switches at which the carrier is required to permit interconnection in accordance with these Regulations, at any satellite earth station, at any radio tower, at any

telecommunications equipment rooms in commercial or residential buildings or at such other locations as the Commission may determine;

- (b) provide equipment space, power, site maintenance and security (subject to taking reasonable security precautions in connection with affording such other carrier access to its own facilities) at each such site; and
- (c) afford such other carrier access to its collocated facilities on a basis no less favourable than the carrier affords to itself.

(6) A dominant carrier may not restrict the type of facilities collocated in accordance with subsection (5)(a) so long as it is of a type of telecommunications equipment customarily located in such locations.

(7) In cases where a dominant carrier cannot offer physical collocation for any reason set out in clauses (a) and (b) of subsection (3), such carrier must take reasonable measures to afford the party requesting collocation alternative solutions, including, but not limited to, virtual collocation, conditioning additional equipment space, optimising the use of existing space or finding adjacent space.

(8) A dominant carrier need not offer to construct additional buildings to accommodate requests for collocation or provide collocation for the staff or personnel of another carrier, except as such other carrier may occasionally require, from time to time, to service or repair its collocated equipment.

**INTERCONNECTION AND ACCESS TO  
TELECOMMUNICATIONS FACILITIES (AMENDMENT)  
REGULATIONS 2008**

**Arrangement of Regulations**

Regulation

1. Citation and commencement
2. Amendment of reg. 11 of Interconnection and Access to Telecommunications Facilities Regulations

**INTERCONNECTION AND ACCESS TO  
TELECOMMUNICATIONS FACILITIES (AMENDMENT)  
REGULATIONS 2008**

*(Legal Notice 26 of 2008)*

Ord. 12 of 2004

**MADE** by the Governor under section 64 of the Telecommunications Ordinance

Citation

1. These Regulations may be cited as the Interconnection and Access to Telecommunications Facilities (Amendment) Regulations 2008.

Amendment of  
reg. 11 of the  
Interconnection  
and Access to  
Telecommunicati  
ons Facilities  
Regulations

2. Regulation 11 of the Interconnection and Access to Telecommunications Facilities Regulations 2005 is amended, in subregulation (1), by deleting the words "Administrative Procedure Rules" and substituting therefor the words "Telecommunications (Administrative Procedure) Regulations".

**MADE** this 1 day of July, 2008.



**RICHARD TAUWHARE, MVO  
GOVERNOR**



## **EXPLANATORY NOTE**

(This note is not part of the Regulations)

These regulations seek to effect a consequential amendment, following from the making of the Telecommunications (Administrative Procedure) Regulations 2008.