



**REPUBLIC OF THE UNION OF MYANMAR  
MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY  
UNION MINISTER'S OFFICE**

**Annex B:  
Proposed Interconnection and Access Rules**

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November 4, 2013



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## PART I. PRELIMINARY

### 1. Citation

These Rules may be cited as the “Interconnection and Access Rules of the Republic of the Union of Myanmar, 2013.”

### 2. Objective

To ensure a simplified, liberalized, transparent, and non-discriminatory interconnection and access framework that promotes the flow of communications between telecommunications networks, market entry and the efficient utilization of network infrastructure in order to facilitate the adequate and timely deployment of telecommunications services to the people of the Republic of the Union of Myanmar.

### 3. Scope

These Rules provide details relating to:

- a) the obligations of Licensees regarding Interconnection and Access;
- b) procedures for entering into Interconnection and Access Agreements and Reference Interconnection and Reference Access Agreements; and
- c) dispute resolution procedures for Interconnection and Access disputes.

The provisions hereunder are complementary to and should be read in conjunction with the licensing provisions found in the Licensing Rules and the competition provisions, particularly the provisions related to dominance found in the Competition Rules.

### 4. Application

These Rules apply to those Persons providing, or who wish to provide Telecommunications Networks and/or Telecommunications Services in the Republic of the Union of Myanmar and holding a License issued by the Department entitling that person to receive or provide Interconnection or Access. Except where a contrary intention appears, the Department’s powers in these Rules shall apply to both proposed and previously approved Interconnection or Access Agreements.

### 5. Interpretation

Headings and titles used in these Rules are for reference only and shall not affect the interpretation or construction herein.

The terms below that are not defined in the Telecommunications Law shall have the following meanings for purposes of these Rules only. To the extent that a term is capitalized in these Rules and not defined below, the term is defined in the Telecommunications Law.

- a) “Access” means the making available of Network Facilities Services and Network Services to another Qualifying Licensee, under defined conditions, for the purpose of providing Telecommunications Services. Access includes such arrangements as infrastructure sharing,



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international gateway access, national roaming, provision of leased lines on a wholesale basis and collocation.

- b) "Access Agreement" means an agreement pursuant to which a Qualifying Licensee agrees to provide Access to an Other Qualifying Licensee.
- c) "Affiliate" means an entity that complies with the following test: an entity is an Affiliate of another entity if:
  - i. the first entity has a Controlling Interest in the second entity;
  - ii. the second entity has a Controlling Interest in the first entity; or
  - iii. a third entity has a Controlling Interest in both the first and second entity.
- d) "Applicable Regulatory Framework" means the rules, regulations, orders, directives, instructions, codes, procedures, and directions issued by the Ministry or Department.
- e) "Controlling Interest" means an ownership interest:
  - i. whether directly or indirectly, of more than fifty (50) percent of the voting stock, membership interest or general partnership interest in another entity; or
  - ii. that provides a Person with the right to do any or all of the following:
    - 1) appoint more than fifty (50) percent of the board of directors or management committee of another entity;
    - 2) appoint, promote, demote, and dismiss senior executives who control the day-to-day activities of another entity;
    - 3) make critical investment, administrative or management decisions of another entity;
    - 4) play a decisive role in management decisions of another entity;
    - 5) manage the day-to-day operations of another entity; or
    - 6) make decisions or otherwise engage in practices or activities that determine or significantly influence the nature or types of services provided by another entity, the terms on which those services are offered or the prices charged for such services.
- f) "Days" means calendar days.
- g) "Department" means the Posts and Telecommunications Department under the Ministry of Communications and Information Technology.



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- h) "Dispute Resolution Request" means a written request made by or to a Qualifying Licensee to invoke the dispute resolution procedures set forth in these Rules.
- i) "Dominant Licensee" means a Qualifying Licensee that, either individually or jointly with others, enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately end-users.
- j) "End User" means a business or individual, other than an Other Qualifying Licensee, to whom a Licensee provides a Telecommunications Service.
- k) "Interconnection" means the physical and logical linking of a Qualifying Licensee's network with the network of any Other Qualifying Licensee in order to allow:
  - i. the users of one Qualifying Licensee's Telecommunications Service to communicate with users of an Other Qualifying Licensee's Telecommunications Service; or
  - ii. access to transit services required to connect the Network Facilities of two Other Qualifying Licensees.
- l) "Interconnection Agreement" means an agreement pursuant to which a Qualifying Licensee agrees to provide Interconnection to an Other Qualifying Licensee.
- m) "License" means, for the purpose of these Rules, an authorization to provide Telecommunications Services as defined under Section [XX] Licensing Rules, 2013.
- n) "Ministry" means the Ministry of Communications and Information Technology of the Union Government.
- o) "Other Qualifying Licensee" means a Person, other than the Qualifying Licensee, that holds a Network Facilities Service License (either Individual or Class) or a Network Service License issued by the Department entitling that person to receive or provide Interconnection or Access.
- p) "Person" means any individual, legal entity or governmental body.
- q) "Qualifying Licensee" means a Person that holds a Network Facilities Service (either Individual or Class) License or a Network Service License issued by the Department entitling that person to receive or provide Interconnection or Access.
- r) "Reference Interconnection Offer" or "RIO" means an offer, made by a Qualifying Licensee, that specifies the prices, terms and conditions on which the Qualifying Licensee is prepared to provide Interconnection to any Other Qualifying Licensee, as more particularly described in Part [IV].



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- s) "Reference Access Offer" or "RAO" means an offer, made by a Qualifying Licensee, that specifies the prices, terms and conditions on which the Qualifying Licensee is prepared to provide Access to any Other Qualifying Licensee, as more particularly described in Part [V].
- t) "Telecommunications Law" means the Telecommunications Law 2013 enacted by the Union Parliament and signed by the President of the Republic of the Union of Myanmar.

## **PART II. PRINCIPLES AND OBLIGATIONS OF INTERCONNECTION AND ACCESS**

### **6. Role of the Department in Interconnection and Access**

- a) The Department shall encourage and, where appropriate, ensure suitable and timely Interconnection and Access aimed at promoting efficiency and sustainable competition, and at providing tangible and lasting benefits to End Users, by:
  - i. imposing obligations on Qualifying Licensees regarding Interconnection and Access; and
  - ii. intervening upon its own initiative whenever justified or at the request of either of the parties involved.
- b) Notwithstanding any provisions of these Rules imposing additional conditions on Dominant Licensees, in promoting the provision of information and communication in the country, the Department may set conditions regarding Interconnection, including:
  - i. conditions to ensure effective competition;
  - ii. technical conditions;
  - iii. conditions relating to tariffs;
  - iv. supply and usage conditions;
  - v. conditions regarding compliance with relevant standards;
  - vi. conditions regarding the provision of essential facilities and services;
  - vii. conditions regarding the protection of the environment;
  - viii. maintenance of end-to-end quality of service and consumer protection;
  - ix. conditions regarding network disaggregation; and/or
  - x. conditions regarding costing approaches and methodologies.



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**7. Obligations in respect of Interconnection and Access**

- a) The Department may, by written notice, direct any Qualifying Licensee to negotiate an Interconnection Agreement with any Other Qualifying Licensee designated by the Department.
- b) A Qualifying Licensee shall negotiate an Interconnection Agreement with an Other Qualifying Licensee where requested in writing to do so by such Other Qualifying Licensee.
- c) The Department may, by written notice, direct any Dominant Licensee to negotiate an Access Agreement with any Other Qualifying Licensee designated by the Department.
- d) The Department may, after providing notice and a reasonable opportunity for comment, direct any Qualifying Licensees to negotiate an Access Agreement to share network facilities that the Regulator determines cannot be efficiently replicated by Other Qualifying Licensees.
- e) A Qualifying Licensee may negotiate an Access Agreement with an Other Qualifying Licensee where requested in writing to do so by such Other Qualifying Licensee, but unless the Qualifying Licensee has been directed to negotiate an Access Agreement by the Department in accordance with Section [7.c) or 7.d)], above, the Qualifying Licensee shall not be required to do so.
- f) Notwithstanding the provisions of Sections [7a)-e)] above, no person shall be granted Interconnection or Access unless it is a Qualifying Licensee.
- g) Any Qualifying Licensee negotiating an Interconnection Agreement or Access Agreement pursuant to Sections [7a)-f)], including any Other Qualifying Licensee designated by the Department pursuant to Sections [7a), c) and d)] shall:
  - i. negotiate in good faith and act in a manner that enables Interconnection or Access to be established as quickly as reasonably possible;
  - ii. provide Interconnection and/or Access on equitable and non-discriminatory terms and conditions, including rates, quality of service and technical standards, and in each case on terms and conditions that are no less favorable than those provided to itself, its Affiliates or subsidiaries, or to Other Qualifying Licensees;
  - iii. ensure that Interconnection capacity is provided in sufficient quantity and quality to be consistent with the relevant quality of service obligations under the Other Qualifying Licensee's License;
  - iv. only refuse to negotiate an Interconnection Agreement or, where applicable, an Access Agreement, where it is not technically feasible to provide such Interconnection or Access services; and
  - v. provide on request to any Other Qualifying Licensee, information reasonably necessary to facilitate the conclusion of any Interconnection Agreement or Access Agreement.



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- h) The Department shall have the right to impose additional obligations on Dominant Licensees in the relevant market, taking account of their appropriateness in each specific case and setting the timeframe for the fulfillment of such obligations.

## 8. Principles of Interconnection and Access

- a) Interconnection and Access shall be provided at any technically feasible point on the Qualifying Licensee's network.
- b) A Qualifying License shall not refuse to provide Interconnection at any requested technically feasible point of interconnect and shall not require additional points of interconnect unless it can be demonstrated that there are reasonable engineering grounds or a need to ensure network resilience justifying such a denial or requirement.
- c) Interconnection and Access shall be provided in a manner that:
  - i. minimizes the potential for negative environmental impacts; and
  - ii. enables the development of competition in the provision of Telecommunications Services.
- d) Any Interconnection Agreement or Access Agreement submitted for approval by a Qualifying Licensee shall be consistent with the Telecommunications Law, the Applicable Regulatory Framework, any Reference Interconnection Offer or Reference Access Offer (as applicable) approved in respect of that Qualifying Licensee, the terms and conditions of the parties' licenses, and any other applicable law.
- e) Where access to any facilities (e.g., for co-location of equipment) is required to effect Interconnection or Access, such Access shall be provided together with the required Interconnection or Access, in accordance with these Rules, pursuant to Section [20], as if the party or parties providing the Access is a Dominant Licensee.

## 9. Rates for Interconnection

- a) Rates for Interconnection services shall be cost-oriented and set to allow the Qualifying Licensee providing the service to recover its costs of providing the service together with a reasonable return on its capital employed.
- b) In determining whether rates for Interconnection services are cost-oriented, the Department may use any internationally accepted methodology for determining rates, including benchmarking and cost studies.
- c) Rates for Interconnection services shall be sufficiently unbundled so that the Qualifying Licensee receiving Interconnection is only required to pay for the network elements and services that it requires.





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- d) The costs of establishing Interconnection shall be shared equally by the interconnecting Qualifying Licensees.
- e) Rates shall be arrived at in a transparent manner.
- f) The Department will review rates for Interconnection periodically, but no less frequently than every four (4) years to ensure they are still cost-oriented.

**10. Rates for Access**

- a) Where an Access Agreement is negotiated pursuant to Section [7.c) or d)] above, rates for Access services shall be cost-oriented unless the Department explicitly approves an alternative reasonable basis for rate determination.
- b) Rates for Access services shall be sufficiently unbundled so that the Qualifying Licensee receiving Access is only required to pay for the network elements and services that it requires.
- c) Except where an Access Agreement is negotiated pursuant to Section [7.d)], above, the costs of establishing Access shall be borne by the Qualifying Licensee seeking the Access services.
- d) Where an Access Agreement is negotiated pursuant to Section [7.d)], above, the costs of establishing the shared network facilities shall be shared equitably by the Qualifying Licensees.
- e) Rates shall be arrived at in a transparent manner.
- f) The Department will review rates in an Access Agreement negotiated pursuant to Section [7.c) or d)] above, periodically, but no less frequently than every four (4) years to ensure they are still consistent with the Applicable Regulatory Framework.

**11. Treatment of Confidential Information**

- a) The Department shall pay due regard to the confidentiality of commercially sensitive information of any Qualifying Licensee and shall use its reasonable efforts to ensure the confidentiality of such information.
- b) The provisions of the preceding Section do not prejudice the exercise of the supervisory and monitoring powers of the Department.
- c) Each Qualifying Licensee shall:
  - i. respect and ensure the confidentiality of information received, transmitted or stored, before, during or after the process of negotiating and entering into an Access or Interconnection Agreement;
  - ii. use any information provided by an Other Qualifying Licensee solely for the purpose for which it was supplied; and
  - iii. not pass any information received from a Other Qualifying Licensee on to any other person, in particular other departments, Affiliates, subsidiaries or partners of the Qualifying Licensee, on which such information could bestow a competitive advantage.



## **PART III. INTERCONNECTION AND ACCESS NEGOTIATIONS AND AGREEMENTS**

### **12. Interconnection and Access Negotiations**

- a) A Qualifying Licensee directed to negotiate an Interconnection Agreement or an Access Agreement pursuant to Section [7.a), 7.c) and 7.d)] shall initiate negotiations with the Other Qualifying Licensee within seven (7) Days of receipt of the direction. The Qualifying Licensee shall provide, at a minimum, the following materials in writing:
  - i. a copy of any Reference Interconnection Offer or Reference Access Offer approved in respect of the Qualifying Licensee, as applicable;
  - ii. where a RIO or RAO is not available, a description of the Interconnection or Access services the Qualifying Licensee provides, including rates, terms, and conditions.
- b) A Qualifying Licensee who receives a request to negotiate an Interconnection Agreement in accordance with Section [7.b)] shall respond to the request within seven (7) Days of its receipt with a copy sent to the Department, and its response shall include at a minimum the information required in Section [13.a) and b)].
- c) The Qualifying Licensee and the Other Qualifying Licensee shall use good faith efforts to reach agreement on Interconnection or Access by negotiation.
- d) If, within ninety (90) Days of being directed to negotiate an Interconnection Agreement or Access Agreement in accordance with Section [7.a) and c)], the Qualifying Licensee and the Other Qualifying Licensee are unable to reach agreement, one or both Qualifying Licensees shall refer the matter to the Department for resolution in accordance with the provisions of Part [VI].
- e) If, within ninety (90) Days of receipt of a request to negotiate an Interconnection Agreement in accordance with Section [7.b)], the Qualifying Licensee and the Other Qualifying Licensee are unable to reach agreement, the Qualifying Licensee that made the request may refer the matter to the Department for resolution in accordance with the provisions in Part [VI].

### **13. Form and Contents of Interconnection Agreement and Access Agreements**

- a) An Interconnection Agreement or Access Agreement shall specify, at a minimum:
  - i. the date of entry into force, duration and arrangements for the modification, termination, suspension and renewal of the agreement;
  - ii. arrangements for the establishment of Interconnection or Access and the planning of subsequent deployment, technical standards for interconnection, level of quality of service guaranteed by each network and coordination measures for monitoring quality of service and fault identification and clearance;
  - iii. a description of the services provided by each party;



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- iv. location of the points of interconnection or access;
  - v. measures relating to tests for interoperability;
  - vi. treatment of intellectual property rights;
  - vii. notification procedures and the contact details of the authorized representatives of each party for each field of competence;
  - viii. operational and maintenance procedures;
  - ix. rules for compensation in the case of failure by one of the parties to meet agreed standards of quality of service;
  - x. procedure in the event of alterations being proposed to the network or service offerings of one of the parties;
  - xi. arrangements for setting fees for services, billing and settlement procedures; and
  - xii. confidentiality.
- b) In addition, an Interconnection Agreement shall specify
- i. arrangements for the provision of equal access and number portability, where applicable;
  - ii. access to basic services including emergency, free-phone and toll-free numbers, directory assistance and text messaging SMS termination services where applicable; and any other services specified by the Department;
  - iii. access to special access services including premium rate services where applicable; and
  - iv. arrangements for measuring traffic.

#### **14. Regulatory Approval**

- a) Within three (3) Days of reaching agreement on the terms of an Interconnection Agreement or Access Agreement, the Qualifying Licensees shall submit the proposed agreement to the Department for approval.
- b) The Department may request additional information from the Qualifying Licensees to a proposed Interconnection Agreement or Access Agreement where it considers it necessary to further evaluate the terms, conditions and rates contained in the proposed agreement.
- c) The Department shall approve the proposed Interconnection Agreement or Access Agreement if it is satisfied that the Agreement is:



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- i. consistent with the Telecommunications Law, the Applicable Regulatory Framework, any Reference Interconnection Offer or Reference Access Offer (as applicable), the terms and conditions of the Qualifying Licensees' licenses, and any other applicable law; and
  - ii. not unreasonably discriminatory or contrary to the interests of End Users.
- d) Where the Department deems an Interconnection Agreement or Access Agreement to be inconsistent with the Telecommunications Law, these Rules, the Applicable Regulatory Framework, any RIO or RAO, the terms and conditions of a Licensee's Licenses, or any other applicable law, the Department may require the parties to amend the agreement to ensure compliance with such instruments. In such cases, the Department shall notify the parties that it does not consider that the proposed Interconnection Agreement or Access Agreement or any part thereof should be approved. It will provide the parties reasonable opportunity to comment on its determination. If, after considering any submissions from the parties, the Department remains of the view that the Agreement should be rejected or amended, the parties to the agreement shall negotiate and submit a revised proposed agreement to the Department within the period specified by the Department.
- e) No Interconnection Agreement or Access Agreement shall take effect unless and until approved by the Department.

#### **15. Publication, Amendment and Modification of Agreements**

- a) The parties to an Interconnection Agreement or Access Agreement shall make available to the public on request all portions of approved Interconnection Agreements or Access Agreements that have not been designated as confidential by the Department.
- b) The parties to an Interconnection Agreement or Access Agreement may propose to amend or modify an agreement that has been approved by the Department by:
  - i. giving not less than thirty (30) Days written notice before the effective date of the amendment or modification; and
  - ii. submitting a copy of the proposed amendment or modification to the Department.
- c) No amendment or modification to any approved Interconnection Agreement or Access Agreement shall take effect unless approved by the Department.

#### **16. Suspension and Termination of Agreement**

- a) No suspension of an Interconnection Agreement or Access Agreement shall take effect unless approved by the Department.
- b) Where a party to an Interconnection Agreement or Access Agreement wishes to suspend that agreement, that party shall provide reasonable notice to the other party and the Department in



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writing, such notice to be at least fifteen (15) Days unless circumstances are such that a shorter notice period is required.

- c) An Interconnection Agreement or Access Agreement shall include provisions for the suspension of the Agreement, or parts thereof, in the event of:
  - i. conduct that is illegal or interferes with the Interconnection or Access obligations of a party to the Agreement;
  - ii. health or safety problems;
  - iii. circumstances that pose an unreasonable risk to the integrity or security of the network or services of a Licensee; or
  - iv. a Union Government determination that it is in the public interest to require suspension of the Agreement.
- d) No termination of an Interconnection Agreement or Access Agreement shall take effect unless approved by the Department.
- e) Where a Party wishes to terminate all or part of an Interconnection Agreement or Access Agreement, that party shall provide reasonable notice to the other party and the Department in writing at least thirty (30) Days prior to implementing such termination.
- f) Notwithstanding any right in an Interconnection Agreement or Access Agreement to suspend or terminate all or any part thereof, the Department shall have the authority to stay such suspension or termination and to impose reasonable conditions on suspension or termination, or to require any party to provide Interconnection or Access on such terms and conditions and at such rates as the Department may deem appropriate, pending suspension or termination, modification or replacement of the Interconnection Agreement or Access Agreement.

#### **17. Implementation of Agreements**

- a) Every Interconnection Agreement and Access Agreement shall stipulate a period not exceeding thirty (30) Days within which arrangements for the provision of service shall be effected between the parties.
- b) The Department may, upon written application by a party to the Agreement, extend this period provided that the party uses all reasonable efforts to effect operations within thirty (30) Days of concluding the relevant agreement, provides the Department with all relevant documentation proving that it has exhausted all practicable means to achieve operational status, and justifies the extension of the original time period. Such application shall be made within the original thirty (30) Day period.
- c) Any extension of this period by the Department in accordance with Section [17.b)] shall not exceed ninety (90) Days.



## PART IV. REFERENCE INTERCONNECTION OFFER

### 18. RIO Obligation for Dominant Licensees

- a) The Department may, by written notice, direct any Dominant Licensee to prepare and submit a Reference Interconnection Offer for approval by the Department. The RIO shall adhere to and incorporate the principles for Interconnection Agreements as set out in Parts II and III of these Rules.
- b) Subject to public consultation, the Department may publish guidelines or models for RIOs, which shall be used by all Dominant Licensees in the preparation of any RIO.
- c) A Dominant Licensee who is required to prepare a RIO under these Rules shall, within sixty (60) Days of notice to that effect by the Department, and periodically thereafter as determined by the Department, submit its RIO to the Department for approval.
- d) The Department may require the Dominant Licensee to modify the terms and conditions of a RIO where the Department is of the view that such terms and conditions are inconsistent with the principles for Interconnection set out in these Rules, the Telecommunications Law, the Applicable Regulatory Framework, the Dominant Licensee's License, or any other applicable law.
- e) Where a Dominant Licensee wishes to modify an approved RIO, it shall make a request in writing to the Department setting out the proposed modification with supporting rationale.
- f) The Department may adopt whatever process it considers necessary for determining whether a proposed RIO or modifications to a RIO should be approved, including holding a public hearing and inviting submissions from interested parties. The Department shall reach a determination on the RIO or modification as expeditiously as possible.
- g) Any existing approved RIO remains in effect until a revised RIO is approved, unless otherwise determined by the Department.
- h) Within seven (7) Days of approval of a RIO or any modification to a RIO, the Dominant Licensee shall publish its offer by:
  - i. posting the RIO on its website; and
  - ii. making printed and electronic copies of the RIO available to any Qualifying Licensee upon request.

### 19. Content of RIO

- a) The RIO shall be as detailed as possible in order to facilitate contract negotiations and shall include, at a minimum, all of the terms and conditions contained in Section [13] above, as well as provisions covering the following if requested by at least one Other Qualifying Licensee:
  - i. services for the routing of traffic (call or session termination and origination);



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- ii. interconnection links;
  - iii. domestic and international outbound transit;
  - iv. supplementary services and implementation arrangements;
  - v. a description of all points of interconnection and conditions of access thereto, for the purposes of physical co-location;
  - vi. comprehensive description of proposed interconnection interfaces, including the signaling protocol and, where appropriate, the encryption methods used for the interfaces;
  - vii. technical and tariff conditions governing the selection of carrier and number portability, where applicable; and
  - viii. third-party billing services.
- b) Every Dominant Licensee shall ensure to the greatest extent possible, that its Interconnection Agreement and its RIO are not inconsistent with each other. In instances where the Interconnection Agreement and RIO are inconsistent and such inconsistencies cannot be justified on the basis of specific circumstances existing between the interconnecting parties, the terms and conditions of the RIO shall prevail.

## PART V. ACCESS

### 20. Access Obligations for Dominant Licensees

- a) The Department may, upon written notice, require a Qualifying Licensee referred to in Sections [7c and d)] to provide reasonable access to and use of its Network Facilities Services and Network Services, particularly in situations where the denial of Access or the setting of unreasonable conditions on Access would hinder the emergence of a sustainable competitive market or harm the interests of End Users. Such obligations may include, but are not limited to the following:
- i. to give Other Qualifying Licensees access to specified network components and/or facilities;
  - ii. not to withdraw or impair access to its Network Facilities where access has been already granted, except where authorized by the Department;
  - iii. to interconnect its Network Facilities;
  - iv. to provide co-location or other forms of facilities sharing, including duct, building or mast sharing;



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- v. to provide specified services needed to ensure interoperability of end-to-end services to End Users, including a requirement for a Qualifying Licensee to provide services enabling third party Qualifying Licensees to interconnect via the first Qualifying Licensee's network, and including facilities for intelligent network services or roaming on mobile networks;
  - vi. to grant open access to technical interfaces, protocols or other key technologies that are necessary for the interoperability of services or virtual network services;
  - vii. to provide specified services, e.g., leased lines, on a wholesale basis for resale by third parties;
  - viii. to provide access to operational support systems or similar software systems necessary to ensure fair competition in the provision of services; and
  - ix. to negotiate in good faith with Qualifying Licensees requesting access.
- b) The Department may attach conditions in respect of fairness, reasonableness and timeliness to the imposition of obligations provided for in the preceding Section [20.a)].
- c) In considering whether or not to impose the obligations set forth in Section [20.a)] of these Rules, the Department shall take into account the following factors, particularly when assessing whether such obligations would be proportionate to the regulatory objectives set out in these Rules:
- i. the technical, environmental and economic viability of using or installing competing facilities, in light of the rate of market development and taking into account the nature and type of access involved;
  - ii. the feasibility of providing the proposed Access, in relation to the available capacity;
  - iii. the initial investment by the facilities owner, taking into account the risks involved in making such investment;
  - iv. the need to safeguard competition over the long term; and
  - v. any relevant intellectual property rights, where appropriate.

**21. RAO Obligation for Dominant Licensee**

- a) The Department may require a Dominant Licensee to submit a Reference Access Offer for approval by the Department. The RAO shall set out the Access services which the Dominant Licensee offers, and shall include the following, where required:
- i. access to fixed and mobile network elements and associated facilities, which may involve the connection of equipment, by fixed or non-fixed means;





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- ii. access to passive physical infrastructure including buildings, ducts and masts;
  - iii. access to relevant software systems including operational support systems, access to number translation or systems offering equivalent functionality;
  - iv. access to conditional access systems for digital television services;
  - v. access to virtual network services; and
  - vi. indirect access.
- b) Subject to public consultation, the Department may publish guidelines or models for RAOs, which shall be used by all Dominant Licensees in the preparation of any RAO.
- c) A Dominant Licensee who is required to prepare a RAO under these Rules shall, within sixty (60) Days of notice to that effect by the Department, and periodically thereafter as determined by the Department, submit its RAO to the Department for approval.
- d) The Department may require the Dominant Licensee to modify the terms and conditions of a RAO where the Department is of the view that such terms and conditions are inconsistent with the principles for Access set out in these Rules, the Telecommunications Law, the Applicable Regulatory Framework, the Dominant Licensee's License, or any other applicable law.
- e) Where a Dominant Licensee wishes to modify an approved RAO, it shall make a request in writing to the Department setting out the proposed modification with supporting rationale.
- f) The Department may adopt whatever process it considers necessary for determining whether a proposed RAO or modifications to a RAO should be approved, including holding a public hearing and inviting submissions from interested parties. The Department shall reach a determination on the RAO or modification as expeditiously as possible.
- g) Any existing approved RAO remains in effect until a revised RAO is approved, unless otherwise determined by the Department.
- i) Within seven (7) Days of approval of a RAO or any modification to a RAO, the Dominant Licensee shall publish its offer by:
- iii. posting the RAO on its website; and
  - iv. making printed and electronic copies of the RAO available to any Qualifying Licensee upon request.



## PART VI. RESOLUTION FOR INTERCONNECTION AND ACCESS DISPUTES

### 22. Referral of Matter for Dispute Resolution

- a) A Qualifying Licensee (i) required by these Rules or its License, or (ii) wishing of its own motion, to invoke dispute resolution in a matter relating to Interconnection or Access, shall file a Dispute Resolution Request in writing with the Department. For the purposes of this Part, the Qualifying Licensee filing the Dispute Resolution Request shall be known as the Claimant, and the other party to the dispute shall be known as the Respondent.
- b) A Dispute Resolution Request shall:
  - i. include the identity and address of the Claimant and Respondent;
  - ii. include a description of the Network Facilities and Network Services which are the subject of the dispute;
  - iii. set out the issues in dispute as well as any issues which have been agreed by the parties;
  - iv. include a detailed description of the efforts the parties have taken to resolve the dispute, the matters the Claimant wishes to have determined, and a concise statement of the relief sought; and
  - v. be copied on the Respondent.
- c) If the Claimant is seeking dispute resolution of its own motion, as a precondition to filing a Dispute Resolution Request, the Claimant shall demonstrate that:
  - i. it has notified the Respondent of the matters in dispute;
  - ii. has made good faith efforts to resolve the dispute through discussions with the Respondent; and
  - iii. at least thirty (30) Days have passed since notice of the dispute was given to the Respondent with the dispute remaining unresolved.
- d) The Respondent shall file with the Department and provide the Claimant with its written response within twenty (20) Days of receiving the Dispute Resolution Request.
- e) The Department may, if the circumstances warrant, shorten or extend the period within which the Respondent shall file its response.



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- f) Upon receipt of the Dispute Resolution Request, the Department may take one or more of the following actions:
- i. request such other information from any person as may be affected by the dispute as it may deem necessary;
  - ii. direct the parties to commence or continue efforts to resolve the dispute;
  - iii. decline to determine the dispute on the basis that the matter:
    - 1) is outside the jurisdiction of the Department;
    - 2) is frivolous, vexatious, or an abuse of process;
    - 3) the Claimant has not made sufficient efforts to resolve the dispute with the Respondent;
    - 4) the subject matter of the dispute is misconceived, defective, or lacking in substance;
    - 5) the determination is unlikely to significantly advance competition in the market;
    - 6) the subject matter of the dispute is not of sufficient social or economic importance;
    - 7) the subject matter of the dispute is not of sufficient importance as to warrant interfering with the commercial agreement reached between the parties; and
    - 8) it is not in the best interests of End Users to subject the matter to dispute resolution.
  - iv. establish any process, including where necessary a public hearing, to gather evidence and submissions from interested parties;
  - v. appoint a mediator or arbitrator to deal with the dispute and establish the terms of reference of such mediation or arbitration, including but not limited to, the process to be used, the timeframes within which the mediation or arbitration shall be commenced and completed, whether the outcome shall be binding on the parties and the Department, and the methodology for apportioning costs;
  - vi. adjudicate the dispute using any process which the Department deems appropriate in the circumstances; and
  - vii. such other action as the Department considers appropriate in the circumstances.

### **23. Guidelines for Resolving Disputes**

- a) In determining a dispute, the Department shall attempt to achieve a fair balance between all legitimate competing interests, including those of the parties to the dispute, End Users, and the country as a whole, and shall act as promptly as practicable, preserving to the greatest extent practicable any agreements between the parties over issues that are not in dispute.



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- b) The Department may consider, where appropriate, the following factors in resolving the dispute:
- i. promotion of the long-term interests of End Users of Telecommunications Services;
  - ii. the economically efficient operation of Telecommunications Services and Networks;
  - iii. the availability of technically and commercially viable alternatives to the Interconnection or Access requested;
  - iv. the desirability of providing users with a wide range of information and communications services;
  - v. the nature of the request in relation to the resources available to meet the request;
  - vi. the need to maintain a universal service;
  - vii. the need to maintain the integrity of telecommunications networks and the interoperability of services;
  - viii. the promotion of competition;
  - ix. the public interest;
  - x. any regulatory obligations or constraints imposed on any of the parties; and
  - xi. any other relevant and appropriate consideration.

**24. Own initiative**

The Department may initiate the dispute resolution process on its own initiative and may impose temporary measures in respect of a Qualifying Licensee to ensure Interconnection and Access disputes do not adversely affect the public interest.