Revised Regulations of Anguilla: T6-4

TELECOMMUNICATIONS ACT (R.S.A. c. T6)

TELECOMMUNICATIONS INTERCONNECTION AND ACCESS TO FACILITIES REGULATIONS

Note: These Regulations are enabled under section 51 of the Telecommunications Act, R.S.A. c. T6.
(Am. in L.R. 15/12/2006)

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PART 1

PRELIMINARY

Interpretation

1. (1) In these Regulations unless the context otherwise requires—

"Act" means the Telecommunications Act;

"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;

"PUC Act" means The Public Utilities Commission Act.

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

Scope of application

2. (1) These Regulations apply to the interconnection of public telecommunications networks and public telecommunications services and to access to facilities and utility installations.

(2) These Regulations apply to all operators of public telecommunications networks and to all providers of public telecommunications services with respect to the operation of such networks and the provision of such services and to all operators and public utilities with respect to access to facilities and utility installations, respectively.

General principles

3. (1) Operators 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 Anguilla 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 approved by the Commission, pursuant to the Act and these Regulations.

Functions of the Commission

4. (1) The Commission shall, consistent with the Act 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 operators and service providers are compensated for providing interconnection services.

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(2) The Commission may, to the extent necessary to ensure end-to-end connectivity—

(a) impose the obligations on operators 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 operators 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 Act and ensure compliance with the Act and these Regulations.

PART 2

OBLIGATIONS OF OPERATORS AND SERVICE PROVIDERS

Duty to interconnect

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

(2) 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 operators and service providers to refrain from refusing, obstructing or in any way impeding, other than for reasonable technical grounds stated in writing, the interconnection of another operator or service provider entitled to obtain such interconnection.

(4) The duty to interconnect specified in subsection (1) includes the requirement that every operator or service provider provide for the transmission and routing of the services of other operators and service providers at any and all technically feasible points, as may be specified in the Telecommunications Code or as otherwise determined by the Commission.

(5) The requirement specified in subsection (4) shall be deemed satisfied if—

(a) interconnection is offered either at the operator's or service provider's host switch or at any other single point of interconnection agreed freely by both parties; and

(b) interconnection is provided at other points upon request, at rates that reflect the offeror's total economic cost of constructing additional facilities necessary to provide the interconnection services at the points requested,

where such interconnection permits end users of one operator and service provider to originate telecommunications to or receive telecommunications from end users of the other operator or service provider.

(6) If neither operator or service provider is dominant, the licensees may agree to interconnect on any mutually agreeable terms consistent with their obligations under the Act, these Regulations, their respective licences and the Telecommunications Code.

(7) Any agreement governing direct interconnection between licensees shall be embodied in an interconnection agreement.

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(8) The Commission may require that an operator or service provider, in fulfilling its duty to interconnect, undertake specific obligations to ensure that the interconnection provided by such operator or service provider is fair, reasonable and timely.

Non-discrimination obligation

6. (1) Every operator and service provider must offer to provide and provide interconnection, and the elements thereof, to other operators and service providers on a non-discriminatory basis, including with respect to charges 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 quality and rates to that provided by the operator or service provider to its own business units or to any affiliate or to any other party to which interconnection is offered or provided.

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

(4) Once an operator 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 operator or service provider requesting interconnection; and

(b) offer the terms and conditions of such an agreement, upon request, to any operator 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 operator or service provider.

Confidentiality obligations

7. (1) Except as permitted under the terms of an applicable interconnection agreement, every operator 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 operator 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 affiliate's) employees, agents and contractors, only for the provision of the specific services related to interconnection that have been requested.

(3) Every operator 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 operator or service provider, or by its affiliates or third parties, other than as permitted by subsection (2).

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PART 3

REFERENCE INTERCONNECTION OFFER

Requirement to publish a reference interconnection offer

8. (1) Every operator or service provider requested to provide a reference interconnection offer shall provide such offer within thirty (30) days of its receipt of such request.

(2) Notwithstanding subsection (1), any dominant operator 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 Act, these Regulations, the Telecommunications Code and the offeror's licence.

PART 4

INTERCONNECTION AGREEMENTS

Negotiating interconnection agreements

9. (1) Upon receipt of a request for interconnection, an operator 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 operator 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 the information specified in the Telecommunications Code.

(4) 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.

(5) Good faith negotiations require, at a minimum, adherence by the parties to the timetables set out in the Telecommunications Code.

Disputes regarding interconnection and interconnection agreements

10. (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 either party may submit such dispute to the Commission for resolution in accordance with such procedures as the Commission may adopt.

(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;

(b) any express or implied refusal to provide interconnection (including as specified in section 5(3) and section 6);

(c) a failure by the parties to conclude promptly an interconnection agreement; and

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(d) 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) Any decision rendered pursuant to subsection (1) shall be binding on the parties.

Submission to the Commission

11. (1) Within 28 days after the parties to a negotiation regarding interconnection have concluded an interconnection agreement, the operator or service provider that responded to the initial request for interconnection shall submit a copy of such agreement to the Commission for its approval.

(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 44 of the Public Utilities Commission Act[1].

(Am. in L.R. 15/12/2014)

(4) The Commission shall approve an interconnection agreement submitted pursuant to subsection (1) unless such agreement violates the Act, the Regulations, the terms and conditions of the parties' licenses, the Telecommunications Code or other provisions of law.

(5) Notwithstanding the Commission's right to approve an interconnection agreement, an interconnection agreement may provide that it will be effective upon submission to the Commission and will remain effective unless the Commission informs the parties to such agreement, within 30 days of its submission, or such longer period as the Commission may in any case determine, that it has not approved the agreement.

Modification, suspension or termination of interconnection agreements

12. (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) Notwithstanding subsection (2), modifications to an interconnection agreement may be effective upon notification to the Commission, or on such other date as the parties may agree, unless the Commission informs the parties to such agreement, within 30 days of such notification, that the interconnection agreement, as modified, no longer is approved.

(4) 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.

[1] This section has been corrected to reflect the renumbering of the Public Utilities Commission Act, R.S.A. c. P175 *(15/12/2014)*.

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PART 5

INTERCONNECTION CHARGES

Interconnection charges

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

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

(3) Every dominant operator and service provider shall provide interconnection at charges 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, charges are "cost-oriented" if the operator'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 operator 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 14, until such date as the Commission shall announce, an operator 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 dominant operator or service provider shall supply its costs with respect to the network elements specified in and pursuant to section 16 for purposes of verifying that its charges for interconnection, and other contributions or charges levied or allowed by the Commission, comply with this section 13.

Interconnection rate methodology

14. (1) Notwithstanding section 13, the Commission shall determine the methodology to be used for determining whether an operator's or service provider's charges 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 operator or service provider whose activity caused such costs to be incurred;

(b) non-recurring costs shall be recovered through non-recurring charges and recurring costs shall be recovered through recurring charges;

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(c) costs that do not vary with usage should be recovered through flat charges and costs that vary with usage shall be recovered through usage-sensitive charges;

(d) rates or charges shall permit the recovery of a reasonable rate of return for that operator or service provider on the capital employed, all attributable operating expenditures, depreciation and a proportionate contribution toward such operator's or service provider's fixed and common costs; and

(e) the burden of proof that charges are derived from costs shall lie with the operator or service provider.

(3) The establishment of, and any amendment to, the methodology determined by the Commission pursuant to subsection (1) is a significant substantive or procedural decision that affects persons within the meaning of section 13 of the PUC Act[2].

(Am. in L.R. 15/12/2014)

PART 6

ADDITIONAL OBLIGATIONS OF DOMINANT OPERATORS OR SERVICE PROVIDERS

Network unbundling obligation

15. (1) Every dominant operator or service provider shall disaggregate its network or service and, in its reference interconnection offer, offer individual network elements and services at charges that are cost-oriented and that are established in accordance with these Regulations and the Telecommunications Code.

(2) Every dominant operator or service provider shall permit other operators or service providers to have non-discriminatory access to telephone numbers, operator services, directory assistance and directory listing services without unreasonable delay and in accordance with the Telecommunications Code.

Network elements

16. (1) Every dominant operator or service provider is required to supply at least the following individual network elements, as well as other essential elements, as determined by the Commission, in markets in which the operator or service provider is dominant—

(a) access lines;

(b) domestic switching of calls carried by such operator or service provider;

(c) domestic transmission of calls carried by such operator or service provider;

(d) international switching of calls carried by such operator or service provider;

(e) international transmission of calls carried by such operator or service provider; and

(f) transiting between domestic operators and service providers.

[2] This section has been corrected to reflect the renumbering of the Public Utilities Commission Act, R.S.A. c. P175 *(15/12/2014)*.

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(2) The Commission may require a dominant operator or service provider to supply, subject to the provisions of section 44 of the PUC Act[3], its costs with respect to the network elements it is required to supply pursuant to subsection (1).

(Am. in L.R. 15/12/2014)

Rate offerings

17. Every dominant operator or 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 paragraphs 16(a) to (c).

PART 7

ACCESS TO FACILITIES

Provision of access

18. (1) An operator shall provide other operators with access to 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) In accordance with section 18 of the Act, operators may have access to utility installations and public utilities may have access to facilities.

(3) An operator or public utility may deny access to a facility or a utility installation only as permitted by section 18 of the Act.

Negotiating access to facilities or utility installations

19. (1) Every operator and public utility must offer to provide and provide access to facilities on a non-discriminatory and equitable basis, including with respect to charges, location and other commercial matters.

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

(3) Upon receipt of a request for access to facilities or utility installations, an operator or public utility 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 facilities or utility installations.

(5) Where one or both of the two parties to a negotiation for access to facilities or to a utility installation 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 facilities or utility installations on an interim basis.

[3] This section has been corrected to reflect the renumbering of the Public Utilities Commission Act, R.S.A. c. P175 *(15/12/2014)*.

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Sharing of facilities or utility installations

20. (1) The Commission may require an operator or public utility to provide co-location or other forms of sharing of facilities or utility installations on the basis of commercially negotiated rates and other terms and conditions.

(2) Where operators and public utilities are not able to reach an agreement regarding compensation for the sharing of facilities or utility installations, the Commission will establish rates based on costs, where appropriate.

(3) In resolving disputes pursuant to section 19(5) and in considering whether to impose co-location or sharing requirements in accordance with subsection (1), the Commission shall endeavour to take into account—

(a) the reasonably anticipated requirements of the operator or public utility;

(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 facilities or utility installations;

(d) the initial investment of the owner of the facilities or utility installation;

(e) the costs of duplicating the facilities or utility installation;

(f) other public interest considerations, such as the environmental impact of deploying certain types of facilities by multiple operators; and

(g) the need to promote and safeguard competition.

(4) Except as the Commission may determine in accordance with subsection (3), a dominant operator must—

(a) allow another operator to co-locate its facilities in buildings housing any switches at which the operator 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 operator access to its own facilities) at each such site; and

(c) afford such other operator access to its co-located facilities on a basis no less favourable than the operator affords to itself.

(5) A dominant operator may not restrict the type of facilities co-located in accordance with paragraph (4)(a) so long as it is of a type of telecommunications equipment customarily located in such locations.

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

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(7) A dominant operator need not offer to construct additional buildings to accommodate requests for co-location or provide co-location for the staff or personnel of another operator except as such other operator may occasionally require, from time to time, to service or repair its co-located equipment.

PART 8

MISCELLANEOUS

Citation

21. These Regulations may be cited as the Telecommunications Interconnection and Access to Facilities Regulations, Revised Regulations of Anguilla, T6-4.

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