Revised Regulations of Anguilla: T6-6

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

TELECOMMUNICATIONS PRICING REGULATIONS

Note: These Regulations are enabled under section 51 of the Telecommunications Act, R.S.A. c. T6.

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Interpretation

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

"Act" means the Telecommunications Act;

"Designated Licensee" means any service provider designated by the Commission as having a position of economic strength with respect to a telecommunications service, as defined in section 17(6) of the Act;

"Price Cap Regime" means the regime for price cap regulation prescribed by these Regulations;

"Price Cap Regime Period" means a period of 3 to 5 Price Cap Years during which the Price Cap Regime is in force for any Designated Licensee;

"Price Cap Services" means telecommunications services subject to the Price Cap Regime;

"Price Cap Year" means the initial year and each subsequent year in which the Price Cap Regime shall be in force for any Designated Licensee;

"Price Control Basket" means a basket (grouping) of Price Cap Services as determined by the Commission pursuant to section 4;

"Price Control Formula" means the formula provided for in section 6;

"PUC Act" means the Public Utilities Commission Act.

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

Application of Regulations

2. (1) These Regulations shall apply in relation to the provision of any Price Cap Service by a Designated Licensee, where and for so long as the Commission determines under section 17(6) of the Act that such Designated Licensee enjoys the position of economic strength, as defined in that section, in relation to the provision of such Price Cap Service.

(2) The Commission may, at any time, issue a determination terminating the application of these Regulations in relation to any Price Cap Service if, after a public consultation, the Commission determines that the Designated Licensee no longer exhibits economic strength, as defined under section 17(6) of the Act.

(3) Compliance with these Regulations is required without prejudice to all other obligations imposed on the Designated Licensee under the Act or under any licence issued by the Commission.

(4) Any determinations issued by the Commission pursuant to these Regulations will be incorporated in the Telecommunications Code.

Pricing constraint

3. Each Designated Licensee shall ensure, at all times, that charges for the Price Cap Services that it provides conform to these Regulations, and that such charges shall be set, and may be changed, and charged to users only as provided in these Regulations.

Price Control Baskets

4. (1) The Commission shall determine, for each Designated Licensee, which telecommunications services shall be Price Cap Services and included in one or more Price Control Baskets for purposes of applying the Price Control Formula.

(2) The initial determination of Price Control Baskets is a significant substantive or procedural decision that affects persons within the meaning of section 13 of the PUC Act[1].

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

(3) The Commission shall determine, in establishing and subsequently reviewing the Price Control Baskets, the weightings to be given to each service component for purposes of calculating the average price levels of the Price Control Basket for a given Price Cap Regime Period.

(4) The Commission shall review the Price Cap Services included in each Price Control Basket at the end of each Price Cap Regime Period—

(a) such review shall include a public consultation in such manner as the Commission may determine;

(b) if, after such consultation, the Commission determines that the Designated Licensee no longer enjoys the position of economic strength defined in section 17(6) of the Act in relation to one or more Price Cap Services included within a Price Control Basket, then such service shall no longer be a Price Cap Service and shall be thereafter excluded from the relevant Price Control Basket.

(5) When a Designated Licensee introduces a new telecommunications service, the Commission shall review the nature, terms, and market position of such service to determine whether it shall be included within a

[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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Price Control Basket, and the weighting to apply to revenues from such service in the calculation of the Price Cap Formula for the next Price Cap Year.

(6) A Designated Licensee may offer packages of bundled Price Cap Services, subject to the terms of its licence, although it must offer each such Price Cap Service individually. Examples of service packages or bundles include Cable and Wireless's "SmartChoice" offerings, as well as potential packages of mobile and fixed-line services, Internet services, and the like.

Changes to prices of Price Cap Services

5. (1) Designated Licensees subject to the Price Cap Regime may freely adjust the prices for Price Cap Services, subject to these Regulations.

(2) Before implementing any changes in prices of Price Cap Services, a Designated Licensee shall provide notice of at least 21 days for price increases, and 10 days for price decreases to users and to the Commission, of such proposed change. The Commission may review any proposed price changes and, if it determines there is reasonable cause, may suspend the effectiveness of such changes pending a formal investigation of their impact upon the Price Cap limitations. If the Commission does not order a suspension within the 21 or 10 day notice period, then the new rates shall take effect. However, the Commission may subsequently review any prior rate changes according to the provisions of these Regulations.

(3) Each Designated Licensee shall take all reasonable steps to ensure that, during any Price Cap Year, any changes in the prices of Price Cap Services comply with the requirements of the Price Cap Regime, specifically, that the weighted average overall prices for each designated Price Control Basket shall not exceed the price level for the Price Control Basket for the given Price Cap Year, as calculated in accordance with section 6—

(a) within three (3) months after the end of each Price Cap Year, the Designated Licensee shall file with the Commission evidence demonstrating compliance with the Price Cap Regime for such Price Cap Year;

(b) if the Commission determines, based on prior problems, or reasonably anticipated problems (based on the Designated Licensee's pricing of the Price Cap Services), with the Designated Licensee's demonstrating compliance, the Commission may, as appropriate, require that the Designated Licensee demonstrate compliance more frequently than as provided in paragraph (a).

(4) If, upon review of price changes implemented by a Designated Licensee during a given Price Cap Year, the Commission determines that such changes have caused the price level for a Price Control Basket to exceed the limitations determined by the Price Control Formula, the Commission may—

(a) order the immediate reduction of prices for one or more Price Cap Services within the Price Control Basket, together with retroactive refunds to customers of such Price Cap Services;

(b) allow the price changes to remain in place, but impose further limitations or a moratorium on future price changes until such time as the Commission determines that customers of the services in question have been properly compensated for the prior excess prices; and/or

(c) impose such other sanctions, penalties, and remedies upon the Designated Licensee as it deems appropriate to respond to the violation of these Regulations, consistent with the provisions of the Telecommunications Act.

(5) Notwithstanding the price level changes permitted under the Price Control Formula, the Commission may establish further limitations on changes to prices of Price Cap Services during any given Price Cap Year—

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(a) such limitations may take the form of either—

(i) restrictions on the maximum overall percentage by which any prices for any Price Cap Service or Price Control Basket may increase within a given Price Cap Year; and/or

(ii) restrictions on the number and frequency of separate price increases to be allowed;

(b) the Commission shall establish any such limitations in establishing and subsequently reviewing the Price Cap Regime at the beginning of each Price Cap Regime Period.

(6) The Commission shall also establish a mechanism, as part of the initial establishment of the Price Cap Regime, to allow for Designated Licensees to carry over from one Price Cap Year to the next changes that were permitted (but not made) in the prices of any Price Cap Services.

(7) Price reductions, including promotional discounts, shall be permitted for all Price Cap Services, subject to—

(a) the requirement to provide sufficient advance notice to customers and the Commission of such reductions;

(b) any restrictions that the Commission may establish regarding the timing and amount of subsequent increases to prices following implementation of discounts or price reductions; and

(c) such price reductions as the Commission may require, in some circumstances, to ensure that prices for Price Cap Services remain within the Price Cap Regime.

Price Control Formula for Price Cap Services

6. (1) The Commission shall establish, following public consultation, the Price Control Formula to apply to Price Control Baskets provided by Designated Licensees—

(a) the Price Control Formula shall calculate the maximum weighted average prices allowed for Price Cap Services within each Price Control Basket during a given Price Cap Year.

(b) weightings for services within each Price Control Basket shall be based upon relative revenues.

(c) the Price Control Formula shall be based upon the formula set out below and in accordance with this section 6—

$$[P(t) = P(o)[RPI - X +/- Z]$$

where:

P(t)	is the current price level at the beginning of Price Cap Year *t*;
P(o)	is the price level at the beginning of the previous Price Cap Year;
RPI	is the relative percentage change in the Anguilla Consumer Price Index;
X	is a Commission-determined productivity or efficiency factor; and
Z	is a factor to represent exogenous cost changes (i.e., changes in costs to the firm—up or down—that are not captured by changes in conventional inputs (labor, capital, and raw materials) and that are beyond the firm's control).

(2) The "*X*" factor in the Price Control Formula shall be determined by the Commission following public consultation, and shall be based upon a formula that evaluates the expected and appropriate level of

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productivity improvement by a Designated Licensee over time. This formula may take into account the following factors—

(a) existing and projected: revenues, financial and operating expenses, depreciation charges and capital employed;

(b) projected volume growth for Price Cap Services within the Price Control Basket(s) or sub-basket(s);

(c) cost/volume and asset/volume relationships;

(d) projected unit input cost changes;

(e) projected tax liabilities;

(f) weighted average cost of capital (WACC) in Anguilla; and/or

(g) such other economic and business considerations as the Commission determines may appropriately reflect the real productivity gains to be expected from the regulated firm.

(3) For purposes of implementing these Regulations, the Commission shall determine all components of the Price Cap Regime that shall apply to each Designated Licensee through an initial public consultation and proceeding—

(a) within 60 days from 23 August 2004, the Commission shall commence such proceeding to establish the initial Price Cap Regime for any Designated Licensee determined to exhibit economic strength with respect to any telecommunications services;

(b) upon conclusion of such proceeding, the Price Cap Regime shall come into force for a Designated Licensee, and the initial Price Cap Year shall begin, with each subsequent Price Cap Year commencing on the anniversary date of the beginning of such initial Price Cap Year;

(c) the Commission shall determine the following elements of the Price Cap Regime through such proceeding—

(i) which services shall be designated as Price Cap Services, based on a determination of economic strength of the Designated Licensee with respect to such services;

(ii) the composition of Price Control Baskets for all Price Cap Services;

(iii) the initial prices of the Price Cap Services within each Price Control Basket;

(iv) the precise Price Control Formula to apply to each Price Control Basket, including initial values and future means of calculating the "*X*" and "*Z*" factors;

(v) all other provisions and requirements of the Price Cap Regime as deemed appropriate by the Commission in conformance with these Regulations.

(4) For each Designated Licensee, the Commission shall determine the Price Cap Regime Period.

Citation

7. These Regulations may be cited as the Telecommunications Pricing Regulations, Revised Regulations of Anguilla, T6-6.

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