

Draft Infrastructure Sharing Regulation

Explanatory Memorandum – East Caribbean Telecommunications Authority (ECTEL)

This summary is intended to provide a brief, readable overview of the selected sections of this draft regulation and is not intended to be comprehensive or definitive. Readers are strongly advised to read the full regulation for a complete understanding of all its provisions. In this summary, Licensee means a person (generally a company) holding a license to provide electronic communications services; Commission means the National Telecommunications Regulatory Commission in each ECTEL country; “electronic communications” services include telecommunications services. BTS is an abbreviation for base transceiver station.

Objectives and Guiding Principles (See section 4)

The objectives of this regulation are to ensure that there is sharing of electronic communications infrastructure among Licensees. The regulations apply to all towers, sites and underground facilities of an electronic communication network.

The Regulations are based on the following guiding principles (see section 5):

Obligation to provide access

- ▶ Licensees must provide access to all towers, sites and underground facilities that it owns and controls on a non-discriminatory and equitable basis
- ▶ A Licensee can deny access if there are reasonable technical grounds to provide it
- ▶ Commission may on the recommendation of ECTEL facilitate alternative access arrangements

Establishment of a forward deployment scheme (See section 6)

- ▶ Commission may require that each Licensee establish an annual deployment scheme and communicate it by July 31 each year
- ▶ Information for wired networks, mobile networks and modification of existing base transceiver stations (BTSs) must be specified in the deployment plan
- ▶ Regardless of whether a Licensee’s network is managed or operated in whole or in part by a third party or is deployed in whole or in part with the support of alternative infrastructures, this does impact the obligations imposed on the Licensee under the Act and these Regulations

Coordination of deployment plans (See section 7)

- ▶ Commission may ensure coordination of projected deployment plans of the Licensees in order to ensure compliance with the sharing of passive infrastructure and to promote digital services in less populated areas
- ▶ Commission upon recommendation from ECTEL may identify areas where systematic sharing of new BTS must be implemented, taking into account public interests, user benefits including environmental protection and regional planning
- ▶ Any such obligations imposed shall take into account the technical and economic viability of the obligations

Implementation of the sharing obligations in section 7 (See section 8)

- ▶ Commission may notify all Licensees of listed areas in which systematic sharing of new BTSs shall be implemented and Licensees shall provide a framework sharing agreement within a six months period in accordance with the principles set out in the Act and these Regulations
- ▶ The framework agreement shall set out conditions for apportioning investment between Licensees involved
- ▶ The framework agreement shall not undermine effective and fair competition in the electronic communications market
- ▶ ECTEL and the Commission may be involved in the negotiations of the framework agreement on legal, technical or economic issues

Features of new BTS (See section 9)

- ▶ New BTS constructed shall comply with the conditions as set out in these Regulations
- ▶ Licensees may contract a joint investment agreement with one or more third operator(s) in sharing the site and may increase infrastructure tariffs not more than 15%
- ▶ The implementation of either of these solutions shall exclude the other and is in any case without prejudice to the obligations under sub regulation (1).

Price for access (See section 10)

- ▶ Prices for access to use of different facilities may vary and must be just, reasonable and based on the owner's cost
- ▶ Licensees shall provide prices for access to and use of facilities in a clear and unambiguous manner
- ▶ The Commission may require a Licensee to publish the prices for access to infrastructure on the Licensee's website and in an appropriate publicly available document

Negotiating access (See section 11)

- ▶ A Licensee may at any time, make an application to another Licensee to share facilities that it owns or controls
- ▶ The party offering access and the party requesting access shall promptly on receipt of the request, start negotiations in good faith with the objective of concluding an infrastructure sharing agreement.
- ▶ Where the parties to a proposed infrastructure sharing agreement are unable to agree on the terms of the agreement within sixty days from the date of the application under sub-regulation (1), either party may request the Commission to resolve the matter, in accordance with Regulation 13.
- ▶ Any decision by the Commission under sub-regulation (4) is binding on the parties
- ▶ A party offering access to towers, sites and underground facilities and a party requesting access to such facilities may conclude these arrangements at the time of negotiating interconnection.

Powers of the Commission (See section 12)

- ▶ The Commission may regulate the rates, terms and conditions for sharing any facility or electronic communication network and these must be just and reasonable. It may resolve disputes concerning rates, terms and conditions in accordance with Regulation 15.
- ▶ The Commission approves every infrastructure sharing agreement
- ▶ The Commission shall impose rates based on costs where operators are unable to reach an agreement regarding compensation for co-location or other forms of infrastructure sharing
- ▶ Where the Commission makes a decision to impose co-location or other forms of infrastructure sharing, the Commission may take into account the need to promote and

safeguard competition including the ease of market entry, costs to duplicate facilities or utility installations, environmental implications, requirements of the operator, public health and safety, investment of owners, amongst others.

Disputes regarding infrastructure sharing (See section 13)

- ▶ Disputes over failure to conclude an infrastructure agreement within sixty (60) days may be submitted to the Commission and provide proof that reasonable efforts were made to amicably settle the dispute
- ▶ The Commission may refer the matter to ECTEL for an opinion or, with the consent of the parties concerned, for mediation
- ▶ ECTEL shall provide a report within three (3) months after the request for mediation from the Commission
- ▶ The Report shall include whether the mediation failed, the parties came to an agreement or where the parties agreed.
- ▶ In case the mediation fails, any of the parties to the dispute may lodge a petition with the Commissioners to resolve the dispute as set out in sub-regulation (4)

Information disclosure (See section 14)

- ▶ Licensees must disclose to the Commission all existing electronic communications network infrastructure they own or host
- ▶ Where the capacity of a site is limited and the site cannot be shared, the Licensees must provide justification of equipment deployed in order to ensure maximisation of sharing opportunities
- ▶ ECTEL and the Commission may post the list of towers, sites and underground facilities available for sharing on their respective websites
- ▶ The Commission may conduct checks on site to verify the statements of Licensees. In case of error, omission or misrepresentation, the Commission may exercise its power to impose sanctions in accordance with subregulation 15 (4).

Compliance (See section 15)

- ▶ A Licensee shall comply with the written orders or directions given by the Commission
- ▶ A person who fails to provide any information requested by the Commission pursuant to these Regulations, commits an offence under section [97] of the Act.

Use of information provided by Licensees (See section 16)

- ▶ The Commission and ECTEL shall ensure the confidentiality of data transmitted to them by Licensees and shall take necessary measures to prevent access to such data by unauthorized persons. The staff of the Commission and ECTEL are bound by professional secrecy
- ▶ The Commission and ECTEL are authorised to communicate limited information to State Service(s) after informing the relevant Licensees
- ▶ Data communication must not create discrimination between Licensees and should not undermine commercial and industrial secrecy.

Publication (See section 17)

- ▶ The Commission, on the recommendation of ECTEL may establish rules in relevant orders or decisions and set out guidelines, procedures, standards and other requirements.
- ▶ The Commission shall ensure that any order, decisions or directions of the Commission be published on its website

Revocation (See section 18)

18. The Telecommunication (Access to facilities) Regulations 200[] [Dominica only] are hereby repealed.