

TELECOMMUNICATIONS ACCESS TO FACILITIES REGULATIONS

Explanatory Memorandum

These Explanatory Notes relate to the Telecommunications Access to Facilities Regulations. These notes have been prepared to assist the reader and do not constitute part of the Regulations. Additionally, the notes are not nor are they meant to be a comprehensive description of the Regulations and where a clause does not appear to require comment none will be supplied.

The regulations are divided into eleven (11) sections, only the most important of which are discussed below.

Regulation 4 -Application of the Regulations

Although the Telecommunications Acts in Contracting States defines ‘facilities’ quite broadly, the regulations have been specifically drafted to specify some of the various elements which could constitute a telecommunications ‘facility’ or part of a ‘network.’ This approach has been taken deliberately to reduce the likelihood of having the Commission make a determination whether a particular type of element fell within the statutory definition.

The regulations apply to all types of networks, as well as to all telecoms providers. It also applies to both requests for access and infrastructure sharing agreements. The cumulative result of this provision is that the NTRC will have jurisdiction over any physical element of a telecommunications network, and over all providers with respect to those elements.

Regulation 5 – Powers of the Commission

This provision establishes the jurisdiction of the Commission to determine rates and to review infrastructure sharing agreements and requests for access. All agreements relating to the subject of access have to be submitted for approval by the Commission.

Regulation 6 – Obligations to provide access

This provision is drafted broadly to impose a clear obligation to provide access to a network.

Regulation 7 – Prices for Access

Similar to the obligations for interconnection, prices for access to and use of facilities should be as transparent as possible, and must be cost based. This section attempts to encapsulate this legislative requirement.

Regulation 8 – Negotiating Access

Although parties can negotiate access agreements at any time, the Commission has the power to approve them once negotiated. Generally, negotiations have to be completed within 60 days. Disputes over access have to be completed by the Commission within 60 days of referral. The

time-limits reflect the need to promote a sense of urgency in dealing with this matter, given its importance to competition.

Regulation 9 – Co-location

The provisions provide some guidance on a range of matters the Commission is required to have regard to before making a determination on co-location.

Regulation 10 – Obligations of Dominant Operators

The provisions empower the Commission to require the dominant operator to give access where certain essential facilities are involved, and to provide the same kind of access to a facility for a competitor, that it enjoys. The dominant operator also cannot refuse the installation of certain types of equipment if that type of equipment is normally required to provide a telecoms related service. However, dominant operators are not obligated to construct new buildings or provide additional personnel to look after the equipment of other operators.

Regulation 11 – Guidelines and Procedures

The regulation simply empowers the Commission to issue rules and procedures on the matter of access. These rules and procedures are already contained in the Interconnection Code (submitted to the 48th Board of Directors meeting) to be published by the Commission.

GRENADA

TELECOMMUNICATIONS (ACCESS TO FACILITIES) REGULATIONS 20[--]

ARRANGEMENT OF REGULATIONS

REGULATIONS

1. Citation
2. Commencement
3. Interpretation
4. Application
5. Powers of the Commission
6. Obligation to provide access
7. Prices for access
8. Negotiating access
9. Co-location
10. Obligations of dominant operators
11. Publication of code

GRENADA

STATUTORY RULES AND ORDERS No. [--] of 20[--]

(Gazette No....of 20[--])

REGULATIONS

In exercise of the power conferred by section 73 of the Telecommunications Act 2000 (Act No. 31 of 2000) the Minister makes the following Regulations –

1. Citation

These Regulations may be cited as the Telecommunications (Access to Facilities) Regulations, 20[--].

2. Commencement

These Regulations shall come into force on the date of its publication in the Gazette.

3. Interpretation

(1) In these Regulations:

“**Act**” means the Telecommunications Act No. 31 of 2000;

“**Commission**” means the National Telecommunications Regulatory Commission;

“**infrastructure sharing agreement**” means an agreement between two public network operators setting out their respective rights and obligations with respect to providing access to and sharing of their telecommunications networks and facilities including towers, sites and underground facilities;

“**telecommunications code**” means a document published by the Commission setting out rules, guidelines and procedures on telecommunications related matters, including access to facilities and co-location.

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

4. Application

(1) These Regulations apply to all telecommunications networks and facilities and any physical component of a telecommunications network, including towers, sites, underground facilities, wires, lines, terrestrial and submarine cables, wave guides, optics or other equipment or object connected therewith, used for the purpose of telecommunications, as well as any post, pole, tower, standard, bracket, stay, strut, insulator, pipe, conduit, or similar thing used for carrying, suspending, supporting or protecting the structure, but does not apply to terminal equipment.

- (2) These Regulations apply to all telecommunications providers with respect to the operation of all telecommunications networks and the provision of all telecommunications services and to:
 - a. agreements for sharing of, and or
 - b. requests for access to

such telecommunications networks and facilities.

5. Powers of the Commission

- (1) The Commission may regulate the rates, terms and conditions for access to any facility or telecommunications network, such rates, terms and conditions to be just and reasonable and it may adopt procedures necessary and appropriate to resolve disputes concerning such rates, terms and conditions.
- (2) Subject to the right of public network operators to conclude the terms and conditions of access to facilities in a proposed interconnection agreement, every infrastructure sharing agreement shall be submitted to the Commission for its approval.

6. Obligation to provide access

- (1) Every public network operator shall offer to provide and provide access to facilities that it owns or controls, on a non-discriminatory and equitable basis, including with respect to charges, location, and other commercial matters.
- (2) A public network operator may deny access only where it can demonstrate to the satisfaction of the Commission that:
 - a. there is insufficient capacity in such facility, taking into account its reasonably anticipated requirements; or
 - b. for reasonable technical grounds
- (3) Where the provision of access to any facility as required by these Regulations is not technically feasible, the Commission may, acting on the recommendation of ECTEL, make such orders or issue such directions to a public network operator as it deems appropriate, to facilitate alternative access arrangements, including, but not limited to
 - (a) virtual co-location,
 - (b) conditioning additional equipment space,
 - (c) optimizing the use of existing space; or
 - (d) finding adjacent space.

7. Prices for access

- (1) Prices for access to and use of different facilities may vary according to the facilities involved, but must be just, reasonable and based on the costs of the owner of such facilities.
- (2) Every public network operator shall make available, upon request, prices for access to and use of facilities that it owns in a manner that is:
 - (a) clear and unambiguous; and

- (b) disaggregated such that the telecommunications provider requesting access shall only have to pay for access to those facilities or parts of the network it requires to provide the services involved.
- (3) The Commission may require a public network operator to publish the prices for access on the operator's website and or in an appropriate publicly available document.

8. Negotiating Access

- (1) A public network operator may at any time, make an application to another operator for access to facilities that it owns or controls.
- (2) Upon receipt of a request, an operator must promptly provide the terms and conditions for such access.
- (3) The party offering access and the party requesting access shall promptly upon receipt of the request, commence negotiations in good faith with the objective of concluding an infrastructure sharing agreement.
- (4) Where the parties to a proposed infrastructure sharing agreement are unable to agree on the terms thereof within sixty (60) days from the date of the application under subsection (1) either party may request the Commission to resolve the matter, in accordance with such procedures as the Commission, acting on ECTEL's recommendation, may adopt.
- (5) Any decision by the Commission pursuant to sub-regulation (4) shall be binding on the parties.
- (6) A decision by the Commission on the matter shall be made within sixty (60) days from the date of the referral to the Commission.
- (7) Notwithstanding subsections (1) – (6), a party offering access and a party requesting access may conclude such arrangements at the time of negotiating interconnection.

9. Co-Location

- (1) The Commission may direct an operator to provide co-location or other forms of infrastructure sharing on the basis of commercially negotiated rates and other terms and conditions.
- (2) Where operators are unable to reach an agreement regarding compensation for co-location or other forms of infrastructure sharing, the Commission shall impose rates based on costs, where appropriate.
- (3) Where the Commission makes a decision to impose co-location or other forms of infrastructure sharing, the Commission may take into account –
 - (a) the need to promote and safeguard competition, including the ease of market entry;

- (b) the costs of duplicating the facilities or utility installations, including the technical or economic viability of installing other facilities;
- (c) the environmental implications of deploying separate types of facilities by multiple operators;
- (d) the reasonably anticipated requirements of the operator;
- (e) issues relating to public health and safety, security, reliability or difficulties of a technical or engineering nature;
- (f) the initial investment of the owner of the facilities involved; and
- (g) any other matters it deems appropriate.

10. Obligations of dominant operators

- (1) The Commission, acting on the recommendation of ECTEL, shall have the authority to direct a dominant operator to –
 - (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 or the Telecommunications (Interconnection) 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.
- (2) A dominant operator may not restrict the type of co-located facilities in accordance with subsection (1)(a) provided it is a type of telecommunications equipment customarily located in such locations.
- (3) A dominant operator is not required 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 operator may occasionally require, from time to time, to service or repair its co-located equipment.

11. Publication of code

The Commission, acting on the recommendation of ECTEL -

- (a) may establish rules in a relevant telecommunications code to give purpose and effect to these Regulations, setting out such guidelines, procedures, standards and other requirements as the Commission may issue or specify;
- (b) shall publish the code, or parts thereof, in the Gazette and on its website;
- (c) may amend, add to or replace the code at any time.

Made this [-----] day of [-----], 20[--]

GREGORY BOWEN

Minister responsible for Telecommunications