

CAYMAN ISLANDS



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**THE INFORMATION AND COMMUNICATIONS TECHNOLOGY
AUTHORITY LAW, 2002**

**THE INFORMATION AND COMMUNICATIONS TECHNOLOGY
AUTHORITY (INTERCONNECTION AND INFRASTRUCTURE
SHARING) REGULATIONS, 2003**

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AUTHORITY (INTERCONNECTION AND INFRASTRUCTURE
SHARING) REGULATIONS, 2003**

The Governor in Cabinet, in exercise of the powers conferred on by section 70 of the Information and Communications Technology Authority Law, 2002, makes the following regulations-

Citation 1. These regulations may be cited as the Information and Communications Technology Authority (Interconnection and Infrastructure Sharing) Regulations, 2003.

Definitions 2. In these regulations-

“calling line identification” means the signalling data generated over an ICT network that identifies the calling number;

“Confidentiality Regulations” means the Information and Communications Technology Authority (Confidentiality) Regulations, 2003;

“Dispute Resolution Regulations” means the Information and Communications Technology Authority (Dispute Resolution) Regulations, 2003;

“ICT network licence” means a licence issued by the Authority for the right to own and obligation to operate an ICT network for which a licence is required pursuant to section 23 of the Law;

“ICT service licence” means a licence issued by the Authority for the right and obligation to operate an ICT service for which a licence is required pursuant to section 23 of the Law;

“ICTA regulations” means any regulations made under the Law either by the Governor in Cabinet or by the Authority;

“infrastructure sharing” means the provision to licensees of access to tangibles used in connection with a public ICT network or intangibles facilitating the utilisation of a public ICT network; and for the avoidance of doubt-

- (a) tangibles include lines, cables or wires (whether fibre optic or other), equipment, apparatus, towers, masts, tunnels, ducts, risers, holes, pits, poles, landing stations, huts, lands, buildings or facilities; and
- (b) intangibles include agreements, arrangements, licences, franchises, rights of way, easements and other such interests.

“interconnection” means the physical or logical connection of public ICT networks of different ICT network providers;

“legal framework document” means a document containing the non-technically specific portion of a proposed draft interconnection agreement;

“licensee” has the same meaning as in the Law subject to the limitation in regulation 3;

“request” means a formal application for interconnection or infrastructure sharing;

“requestor” means a licensee who makes a request for interconnection or infrastructure sharing from another licensee;

“responder” means a licensee to whom a request for interconnection or infrastructure sharing has been made; and

“the Law” means the Information and Communications Technology Authority Law, 2002;

3. In these regulations, the word “licensee” refers only to licensees under the Law that hold licences for major public ICT networks as prescribed in the notice gazetted pursuant to section 23(2) of the Law.

Application of regulations

4. (1) In accordance with the provisions of section 44 of the Law, a licensee shall not refuse, obstruct or in any way impede another licensee in the making of any interconnection or infrastructure sharing arrangement.

Provision of interconnection and infrastructure sharing

(2) A requestor or responder shall not negotiate or propose to enter into an interconnection or infrastructure sharing agreement where the Authority determines that-

- (a) interconnection or infrastructure sharing would endanger life or safety, or irreparably damage property or threaten the integrity, security or interoperability of a public ICT service or public ICT network;
- (b) the licence issued to the responder exempts it from the obligation to provide interconnection or infrastructure sharing;
- (c) the licence issued to the requestor does not authorise it to operate the public ICT network or to provide the public ICT service for which infrastructure sharing or interconnection is sought; or
- (d) the requested interconnection or infrastructure sharing is contrary to the laws of the Islands or the public interest.

(3) A responder shall not refuse to provide infrastructure sharing services, except where-

- (a) there is insufficient capacity, taking into account its reasonably anticipated requirements; or
- (b) such provision would create a technical or engineering difficulty that could not be reasonably addressed.

(4) Where a requestor disagrees with the basis for any refusal, it may refer the matter to the Authority in accordance with the Dispute Resolution Regulations.

Conclusion of interconnection and infrastructure sharing arrangements

5. Interconnection and infrastructure sharing arrangements shall be concluded as quickly as possible and in any event, no later than the time limits set out in these regulations, unless otherwise agreed between the parties.

Principles and guidelines

6. The following general principles and guidelines shall apply to the provision of interconnection and infrastructure sharing services-

- (a) each licensee has an obligation to treat requests, to negotiate interconnection and infrastructure sharing agreements and to provide interconnection and infrastructure sharing services in good faith;
- (b) consistent with sections 44 to 46 of the Law, licensees shall, in the first instance, attempt to reach agreement on interconnection and infrastructure sharing by negotiation; where there is a dispute, the parties may refer the matter to the Authority for resolution in accordance with the Dispute Resolution Regulations;
- (c) interconnection and infrastructure sharing services shall be provided by the responder to the requestor at reasonable rates, on terms and conditions which are no less favourable than those

- provided by the responder to itself, any non-affiliated licensee or any subsidiary or affiliate of the responder and shall be of no less favourable quality than that provided by the responder to itself, any non-affiliated licensee or any subsidiary or affiliate of the responder;
- (d) interconnection and infrastructure sharing rates shall be determined in a transparent manner;
 - (e) in the event the Authority is satisfied that a licensee incurs an access deficit, the Authority shall determine a mechanism for recovering the access deficit that is consistent with competitor equity principles;
 - (f) costs and tariffs shall be sufficiently unbundled so that the requestor shall be obliged to pay the responder only for the network elements or infrastructure sharing services that it requires;
 - (g) costs shall be borne either by the requestor or the responder or both based on whether their respective requests and compliance with those requests cause those costs to be incurred; and in accordance with an interconnection or infrastructure sharing agreement between the two parties;
 - (h) interconnection and infrastructure sharing rates shall be cost-oriented and shall be set to allow the responder to recover a reasonable rate of return on its capital appropriately employed, all attributable operating expenditures, depreciation and a proportionate contribution towards the responder's fixed and common costs;
 - (i) interconnection rates shall not include compensation for loss of business as a result of providing interconnection or infrastructure sharing services to the requestor;
 - (j) interconnection and infrastructure sharing services shall be provided in a manner that –
 - (i) maximises the use of public ICT networks and infrastructure;
 - (ii) minimises the potential for negative environmental impacts; and
 - (iii) enables the development of competition in the provision of public ICT networks and public ICT services in a timely and economic manner;
 - (k) interconnection and infrastructure sharing services shall be provided by the responder to the requestor at any technically feasible point on terms and conditions that are just, reasonable and non-discriminatory and in accordance with an

interconnection or infrastructure sharing agreement between the two parties;

- (l) any disputes relating to interconnection and infrastructure sharing shall be referred to the Authority under the Dispute Resolution Regulations; and
- (m) failure to comply with any provision of these regulations shall be, among other remedies available under the Law or the licensee's licence, subject to the penalty provisions in regulation 30.

Legal framework document

7. (1) Each licensee shall file an indicative non-binding legal framework document with the Authority within the time period specified in its licence and, if not so specified, upon receipt of a request by a requestor to obtain interconnection or infrastructure sharing services.

(2) The Authority may, in its discretion, direct a licensee to amend the legal framework document to reflect the terms of its licence, relevant rules, regulations, decisions, directives or standards and other guidelines that the Authority may prescribe; and the Authority may also require the licensee to publish and use the legal framework document and other documents, in negotiation with requestors.

(3) Interconnection and infrastructure sharing agreements shall be based upon the Law and the terms of the responder's legal framework document.

(4) A legal framework document shall set out, at a minimum, the interconnection or infrastructure sharing services and the commercial terms and conditions under which such services shall be provided by a responder.

(5) The interconnection or infrastructure sharing services detailed in the legal framework document shall be sufficiently unbundled to ensure that a requestor is not required by a responder to acquire network elements or infrastructure sharing services that are either not required or have not been requested.

(6) Information contained in a legal framework document shall not be designated as confidential.

(7) The Authority may require a responder to make available the entire legal framework document in electronic format to any person without any restriction.

Rights and obligations

8. (1) Licensees shall have a right and, when requested by other licensees, an obligation to negotiate interconnection and infrastructure sharing services in

order to ensure the provision and interoperability of services throughout the Islands.

(2) A request for a quotation to provide interconnection or infrastructure sharing services shall contain at least the following information-

- (a) the reference number of the requestor's ICT licence;
- (b) a technical description of the requested services;
- (c) locations;
- (d) dates required; and
- (e) projected quantities to be ordered with a period of 3 years forecast.

(3) A requestor shall be responsible for the reasonable costs incurred by the responder in processing the request, and shall include with the request a non-refundable deposit of \$2000 or such other amount as specified from time to time by the Authority.

(4) Requests may be cancelled at any time by the requestor.

(5) The responder shall acknowledge receipt of each request no later than 3 days following receipt of the request; and the responder shall provide the Authority, with a copy of the original request and the acknowledgement receipt.

(6) The responder shall consider and analyse each request and advise the requestor within 14 days of the acknowledgement of receipt of the request, or such other time period as agreed between the parties of-

- (a) the need for any further information for purposes of having a sufficiently complete and accurate request; or
- (b) that the request is sufficiently complete and accurate to provide a quotation.

(7) The responder shall provide a quotation as quickly as possible and in any event no later than 30 days, or within such other time period as agreed between the parties, after receipt of a complete and accurate request.

(8) Where the responder denies a request, the responder shall provide detailed written reasons for such denial to the requestor within 20 days of the receipt of a complete and accurate request.

(9) A quotation shall contain all information required by the requestor to fully consider the rates, terms and conditions for obtaining the requested services, including the following minimum information-

- (a) date of availability;
- (b) installation intervals;
- (c) applicable rates;
- (d) request development and processing costs; and
- (e) other such necessary terms and conditions required to effect interconnection or infrastructure sharing.

(10) Within 20 days of the receipt of the quotation, or such other time period as agreed between the parties, the requestor and responder shall undertake good faith negotiations to resolve any outstanding matters for purposes of producing an interconnection or infrastructure sharing agreement.

(11) For the purposes of paragraph (10), the following actions or practices violate the obligation to act in good faith-

- (a) refusing to include in an interconnection or infrastructure sharing agreement a provision that permits the agreement to be amended in the future to take into account applicable changes to the laws rules and regulations of the Islands and to the determinations and court decisions of the Authority;
- (b) intentionally misleading or coercing another party into reaching an agreement that it would not otherwise have made;
- (c) intentionally refusing to provide or delaying the provision of information necessary to reach an agreement;
- (d) obstructing or delaying negotiations, the provision of services according to a final interconnection or infrastructure agreement, or the resolution of pre-contract disputes; and
- (e) refusing to designate a representative with the Authority to make binding representations, if such refusal significantly delays the resolution of issues.

(12) At any stage of negotiations, either party may declare a dispute and refer the matter to the Authority under the Dispute Resolution Regulations; and the Authority may consider such requests under an expedited process in accordance with the Dispute Resolution Regulations.

(13) An agreement between the responder and the requestor shall be concluded within 30 days of the commencement of negotiations or such other time period as they have agreed.

Rate structure

9. The rates offered by the responder to the requestor shall clearly identify all charges for interconnection or infrastructure sharing.

10. (1) A responder's charges for interconnection or infrastructure sharing shall be- Charges

- (a) determined in a transparent manner, subject to any confidentiality claims under the Confidentiality Regulations to which the Authority may agree;
- (b) non-discriminatory in order to ensure that a responder applies equivalent conditions in equivalent circumstances in providing equivalent services, as the responder provides for itself, any non-affiliated licensee or any subsidiary or affiliate of the responder;
- (c) reciprocal for the same service in order that the responder and requestor pay the same rate for providing each other the same services, except for any applicable contribution towards an access deficit that may be approved by the Authority;
- (d) preferably such that non-recurring costs shall be recovered through non-recurring charges and recurring costs shall be recovered through recurring charges;
- (e) such that charges that do not vary with usage shall be recovered through flat charges and costs that vary with usage shall be recovered through usage-sensitive charges; and
- (f) based on a forward-looking long-run incremental cost methodology once it is established by the Authority following a public consultative process.

(2) In accordance with section 53 of Annex 5 to Cable & Wireless' licence, until the development of an approved FLLRIC model, Cable & Wireless shall use its fully allocated cost model with the following adjustments (adjusted FAC model)-

- (a) inclusion of the 2002/2003 financial data and traffic data;
- (b) treatment of the licence fee as an expense;
- (c) inclusion of the rebalanced tariffs;
- (d) revision of the allocation of cellular antenna and tower costs to: 80% cellular, 10% distribution, and 10% switching;
- (e) inclusion of the planned charges to directory assistance, reconnection and installation; and
- (f) reduction to the weighted average cost of capital to 13.5%,

all of which are subject to verification by the Authority.

(3) In accordance with section 54 of Annex 5 to Cable & Wireless' licence, in lieu of updating its adjusted FAC model annually, Cable & Wireless shall apply-

- (a) a productivity improvement assumption of 4.8% to the total per minute rate for terminating calls on its fixed line network, excluding the call set up component; and
- (b) a productivity improvement assumption of 25% to the total per minute rate for transiting calls on its fixed line network, excluding the call set up component; and

after the adjustments in (a) and (b) are made, further adjustments to the above rates shall not be required until a FLLRIC model is approved.

(4) In accordance with section 56 of Annex 5 to Cable & Wireless' licence, where Cable & Wireless makes an application to the Authority requesting that interconnecting licensees pay a contribution towards its access deficit, the Authority shall first be satisfied, through a public consultative process, that an access deficit exists.

(5) Any mechanism to recover the access deficit referred to under paragraph (4) shall be arrived at following a consultative process and be consistent with competitive equity.

(6) The Authority, if it considers it appropriate and where it is satisfied that an access deficit exists, may use a recovery mechanism which is a deficit contribution to be paid by interconnecting licensees.

(7) The burden of proof that charges are derived from costs shall lie with the responder in all cases.

(8) In accordance with section 47(1) of the Law, the requestor shall pay the cost of establishing interconnection.

(9) Interconnection and infrastructure sharing charges shall be recovered over such period of time as negotiated between the parties.

(10) The requestor and responder shall agree as to which set of costs as between the two parties are to be used for setting the charges for interconnection and infrastructure sharing.

(11) In the absence of an agreement, the Authority shall make a determination with regard to which party has produced a detailed cost model that conforms with the requirements of paragraph (1) (f).

Mobile interconnection charges

11. (1) In accordance with section 60 of Annex 5 to Cable & Wireless' licence, where the international settlement payment on a carrier route basis

received by Cable & Wireless is less than the mobile termination rate to deliver that traffic in addition to the Cable & Wireless' cost of transiting and delivering the call to a mobile licence holder, Cable & Wireless shall first attempt to negotiate or otherwise obtain a higher international settlement payment.

(2) Where Cable & Wireless is unsuccessful in obtaining a higher settlement payment in accordance with paragraph (1), then Cable & Wireless and the mobile licence holder shall negotiate an arrangement for the splitting of the international settlement payment; and where the parties are not able to reach an agreement-

- (a) the mobile licence holder may refuse the use of Cable & Wireless' facilities to terminate the international mobile traffic, without penalty, provided it receives a higher international settlement payment itself (or through a third party) and therefore is able to terminate international mobile traffic itself; or
- (b) either party may refer the dispute to the Authority for determination.

(3) Where the mobile licence holder has exercised its option to refuse the traffic under paragraph (2) (a), the need for the dispute to be resolved by the Authority is negated.

(4) This regulation shall also apply, with the necessary changes, when Cable & Wireless is the mobile licensee and the other licence holder is the transiting international carrier seeking to terminate the call on Cable & Wireless' mobile network.

12. A responder shall offer interconnection services at any technically feasible point of its public ICT network, upon request by a requestor.

Points of
Interconnection

13. (1) A responder shall provide, on request, information reasonably required by requestors in order to facilitate any agreements for interconnection or infrastructure sharing including any information required to give effect to any agreement.

Provision of information

(2) Further to paragraph (1), a responder shall provide, at all appropriate times, information as to any planned changes to the responder's network which may affect interconnection or infrastructure sharing, unless otherwise agreed by the Authority.

- Confidentiality
14. (1) Information received by either party for the provision of interconnection or infrastructure sharing service where such information received is of a competitive nature, such as-
- (a) customer orders;
 - (b) market forecasts;
 - (c) plans for the development of new services;
 - (d) network plans;
 - (e) new customers; and
 - (f) current or proposed business plans,
- shall be treated in confidence and shall be shared only among those persons who require to know in order to provide services to the requestor, unless expressly agreed to by the affected party.
- (2) Neither party shall provide such information to any personnel involved in the provision of ICT services offered in competition and each party shall use such information solely for the purpose for which such information is received.
- Calling line identification
15. Every responder and requestor shall offer calling line identification and all necessary signalling data, in accordance with accepted international standards and any codes which may be issued by the Authority.
- Technical standards
16. (1) Responders shall make available to interested parties such network information, technical standards and specifications as may be required to enable a requestor to make interconnection or to obtain infrastructure sharing services.
- (2) The Authority may issue a direction as to the information that shall be provided under this rule.
- Services
17. (1) A responder shall provide detailed written reasons to the requestor and shall provide a copy thereof to the Authority where the responder cannot provide the following services sought by a requestor-
- (a) operator services;
 - (b) directory assistance services;
 - (c) directory listings in the directory assistance database;
 - (d) interconnection to the 911 system;
 - (e) termination services; and
 - (f) transit services.
- (2) Where the requestor disagrees with a refusal of a request for services, it may refer the matter to the Authority for a ruling in accordance with the Dispute Resolution Regulations.

18. (1) As defined in Schedule 1 to the Agreement between Cable & Wireless, the Governor in Cabinet and the Authority, dated 10 July 2003, indirect access is the method whereby a subscriber is able to access international ICT services provided by another licence holder, through the ICT network and ICT services of the licence holder with whom the subscriber is directly and physically connected.

Indirect access

(2) Indirect access shall be mandated to be provided by the Authority after it has determined through a public consultation process that the benefits to the general public from such mandate will outweigh the costs to all parties and that the mandate will not impose an unfair burden on any licence holder.

19. All interconnection and infrastructure sharing agreements shall be in writing and the following minimum matters shall be specified in those agreements except where a particular matter is irrelevant to the specific form of service requested-

Form and content of agreement

- (a) capacity and service levels agreed between the parties including the remedies for any failure to meet those service levels;
- (b) a provision that deals with regulatory change, including determinations by the Authority;
- (c) duration and renegotiation of agreements;
- (d) forecasting, ordering, provisioning and testing procedures;
- (e) dispute resolution procedures, which shall be consistent with the provisions of the Law and the Dispute Resolution Regulations;
- (f) geographical and technical characteristics and location of each point of interconnection;
- (g) information handling and confidentiality provisions;
- (h) intellectual property rights;
- (i) measures anticipated for avoiding interference with or damage to the networks of the parties involved or those of third parties;
- (j) methods for measuring service quality, which shall generally be derived from appropriate national and international methods and indices;
- (k) procedures in the event of alterations being proposed to the network or service offerings of one of the parties;
- (l) provision of infrastructure sharing and identification of co-location and their terms;
- (m) provision of network information;
- (n) technical specifications and standards;
- (o) terms of payment, including billing and settlement procedures;
- (p) the maintenance of end-to-end quality of service;
- (q) the procedures to detect and repair faults, as well as an estimate of acceptable average indexes for detection and repair times;
- (r) the scope and description of the services to be provided;

- (s) the technical characteristics of all the main and auxiliary signals to be transmitted by the system and the technical conditions of the interfaces;
- (t) transmission of calling line identification, where available to be transmitted;
- (u) the obligations and responsibilities of both the requestor and the responder in the event that inadequate or defective equipment is connected to their respective networks;
- (v) rates from time to time agreed for the provision of each service;
- (w) provision for the suspension, termination or amendment of the agreement in the event of-
 - (i) conduct that is illegal or interferes with the obligations of the licensee, under the relevant licence, the Law or ICTA regulations;
 - (ii) requirements that are not technically feasible;
 - (iii) safety problems;
 - (iv) requirements for space that is unavailable; or
 - (v) circumstances that pose an unreasonable risk to the integrity or security of the ICT networks or ICT services of the responder;
- (x) a provision to allow for the suspension of services where it is necessary to deal with a material degradation of the public ICT network or public ICT services; and
- (y) any other relevant issue;

Improper provisions

20. An interconnection or infrastructure sharing agreement shall not contain any provision which has the effect of-

- (a) imposing any unfair or discriminatory penalty or disadvantage upon a requestor in the exercise of the requestor's right to be provided with interconnection or infrastructure sharing;
- (b) precluding or frustrating the exercise of a licensee's right or privileges afforded under the Law, ICTA regulations, rules, decisions or directives; or
- (c) preventing a licensee from lawfully providing interconnection or infrastructure sharing services to another licensee.

Insufficient space

21. (1) In the event that sufficient space is not available at a responder's facilities and the responder and requestor are unable to arrive at an alternative solution expeditiously, either party may refer the matter to the Authority for a ruling in accordance with the Dispute Resolution Regulations.

(2) The Authority, in considering an issue under this regulations, may direct the responder to show cause why it should not, as an alternative, be

required to transport the requestor's signal from an external interconnection facility to the responder's central office with zero mileage charges.

22. (1) The parties shall file a copy of an interconnection or infrastructure sharing agreement, as the case may be, with the Authority within 7 days of the signing of the agreement. Requirement to file

(2) The Authority may reject any interconnection or infrastructure sharing agreement, or any portion thereof, if it determines that the agreement does not comply with the Law, conditions of the licence, relevant regulations, regulations, decisions, directives or standards and other guidelines that the Authority may prescribe.

23. The parties to an interconnection or infrastructure sharing agreement may amend or modify an agreement which has been filed with the Authority by- Amendment

- (a) submitting a copy to the Authority within 7 days following agreement to the proposed amendment or modification; and
- (b) giving not less than 90 days written notice to the other party prior to the effective date of the amendment or modification, unless otherwise agreed by both parties.

24. The responder shall promptly provide services in accordance with final interconnection or infrastructure sharing agreements. Provision of services

25. Interconnection and infrastructure sharing agreements and the procedures for arriving at such agreements shall be based upon the terms of the Law, conditions of the licence, relevant regulations, regulations, decisions, directives or standards and other guidelines that the Authority may prescribe. Adherence to the Law

26. Where either the requestor or responder believes that the other party is not requesting, negotiating, or processing a request in good faith, or if there is a dispute between the parties as to the terms and conditions for the provision of interconnection or infrastructure sharing, either party may submit the matter to the Authority for resolution in accordance with the Dispute Resolution Regulations. Disputes

27. (1) The Authority may, in accordance with the Confidentiality Regulations, direct that any part of an interconnection or infrastructure sharing agreement shall be kept confidential. Confidentiality order

(2) Any request to keep part of an interconnection or infrastructure sharing agreement confidential shall be accompanied by a non-confidential description of the relevant portion of the agreement.

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| Infrastructure sharing | 28. In promoting the efficient, economic and harmonised utilisation of infrastructure, the Authority may inquire into and require modification of any agreement or arrangements entered into between a responder or requestor and another licensee which has the effect of limiting either efficient and harmonised utilisation of infrastructure or the promotion of competition in the provision of public ICT services or public ICT networks. |
| Performance measures | 29. The Authority may, from time to time, require information to be filed by responders for purposes of evaluating the provision of interconnection and infrastructure sharing services to requestors on a non-discriminatory basis. |
| Penalties | 30. In accordance with section 70(2) of the Law, the contravention of any provision of these regulations constitutes an offence and any person contravening any provision of these regulations shall be liable, on summary conviction, to a fine not exceeding \$20,000 or to imprisonment for a period not exceeding one year. |

Made by the Cabinet the 4th day of November, 2003

Carmena Watler

Clerk of the Cabinet