



REPUBLIC OF PALAU
MINISTRY OF PUBLIC INFRASTRUCTURE, INDUSTRIES AND COMMERCE
BUREAU OF COMMUNICATIONS

Interconnection and Access Rules

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Interconnection and Access Rules

Chapter I. Preliminary

§1. Authority

These rules are promulgated pursuant to the powers granted to the Bureau by §413 of the Act.

§2. Title

These rules shall be cited as the “Interconnection and Access Rules, 2022.”

§3. Objectives

The objectives of these rules are to:

- (a) promote competition, the interest of customers, and efficient investment in the telecommunications sector;
- (b) encourage commercially negotiated interconnection and access agreements between licensees;
- (c) ensure interoperability and end-to-end connectivity of telecommunications networks and telecommunications services;
- (d) establish interconnection and access dispute resolution processes;
- (e) define the standard terms and pricing principles for interconnection and access services;
- (f) identify mandatory interconnection and access services;
- (g) set forth rules governing transparency of reference interconnection offers and reference access offers; and
- (h) set forth rules to minimize or avoid, as much as possible, unnecessary duplication of infrastructure as a way to increase efficiency and protect the environment.

§4. Application

- (a) These rules apply:
 - (1) for purpose of interconnection, to licensees that use switching and routing equipment to offer telecommunications services to the public; and
 - (2) for purpose of access, to licensees that:
 - (A) own or control essential facilities; or
 - (B) request access to essential facilities.

§5. Definitions

- (a) Any word, phrase or expression used in these rules shall, unless the context requires otherwise or it is expressly defined in these rules, have the same meaning as it has in the Act.
- (b) Headings and titles used in these rules are for reference only and shall not affect the interpretation or construction of these rules.

- (c) References to a word or phrase in the singular encompass references to words or phrases in the plural, and vice versa.
- (d) The terms listed below shall have the following meanings:
- (1) “Access” means, as the context requires, the provision by one licensee to another of access to a telecommunications network or telecommunications facility for the purpose of the second licensee providing telecommunications services;
 - (2) “Access provider” means a licensee that is asked by another licensee to provide it with access on a non-discriminating wholesale basis to a telecommunications network or a telecommunications facility that it owns or controls;
 - (3) “BSCC” means the Belau Submarine Cable Corporation;
 - (4) “Access seeker” means a licensee that requests access from an access provider;
 - (5) “Act” means the Palau National Telecommunications Act of 2017 codified in Title 15 of the Palau National Code, as may be amended from time to time;
 - (6) “Affiliate” means, in relation to any one person, any other person directly or indirectly controlling or controlled by or under the direct or indirect common control with, such specified person;
 - (7) “Bureau” means the Bureau of Communications established under Title 2 of the Palau National Code, or its successors;
 - (8) “Class license” means an operating license registered in accordance with the Act and applicable rules;
 - (9) “Co-location” means accommodation of two or more switches, transmission equipment, antenna or any other telecommunication equipment in, or on a single building, a tower or any other structure for the purpose of interconnection or access;
 - (10) “Customer” means a person who contracts for telecommunications services, as or on behalf of a user of telecommunication services;
 - (11) “Control” by a licensee of an essential facility means the licensee having the legal right either by virtue of an agreement with the owner or otherwise to procure the full compliance by the owner of that essential facility with these rules;
 - (12) “Days” means calendar days;
 - (13) “Dominant service provider” means in respect of a telecommunications market a licensee who, as determined by the Bureau:
 - (A) receives forty percent (40%) or more of the total gross revenues of all service providers in that market; or
 - (B) has a position of economic strength, or owns or controls an essential facility in that market, that allows the licensee to behave independently of competitors or potential competitors, or customers;
 - (14) “Equipment” means any appliance, apparatus, device, or accessory used or intended to be used for telecommunications purposes;
 - (15) “Essential facility” means a telecommunications facility declared by the Bureau to be indispensable for the production of telecommunications services which, for technical, legal or

economic reasons, cannot practicably be duplicated by a potential competitor in a telecommunications market;

- (16) “First licensee” means a licensee who is requested to provide interconnection or access or any licensee who is currently providing interconnection or access. For purpose of access, this is equivalent to the access provider;
- (17) “Individual license” means an operating license granted in accordance with the Act and applicable rules;
- (18) “Interconnection” means, as the context requires, the physical and logical linking of telecommunications networks operated by the same or different licensees in order to allow the customers of one licensee to communicate with the customers of the same or another licensee, or to access the telecommunication services of another licensee.
- (19) “Interconnection and access agreement” means, as the context requires, an interconnection agreement or an access agreement;
- (20) “License” means an individual license, a class license, or a consolidated individual license granted pursuant to §705(a) of the Act;
- (21) “Licensee” means, for purpose of these rules, a person who holds a license and is subject to these rules under §4. ;
- (22) “Person” means any natural person or other nongovernmental entity, however organized;
- (23) “Point of interconnection” means a physical or logical point where the telecommunications network of one licensee is connected to the telecommunications network of another licensee for the purpose of interconnection;
- (24) “Second Licensee” means a licensee that requests interconnection or access from the first licensee. For purpose of access, this is equivalent to the access seeker;
- (25) “Telecommunications” means the conveyance from one device to another of any message by means of any wire, radio, optical, electric, magnetic, electromagnetic, or similar system;
- (26) “Telecommunications facility” means any infrastructure, building, or switching equipment; any submarine cable landing in Palau, submarine cable landing station, or satellite transmitting facility; any location, mast site, tower, pole, trunk line, access line, duct or other underground facility; or other passive equipment that is used or is capable of being used for telecommunications or for any operation directly connected with telecommunications, but excluding customer equipment;
- (27) “Telecommunications network” means a system that uses electricity or electromagnetic energy for providing telecommunications services between network termination points;
- (28) “Telecommunications service” means a service for the transmission or transport of messages by means of a telecommunications network.

Chapter II. Process to enter into interconnection and access agreements

§6. Commercial negotiation

- (a) A licensee must, on written request from another licensee, negotiate an interconnection agreement in accordance with the Act and these rules.

- (b) A licensee that owns or controls an essential facility must, on written request from another licensee, promptly negotiate an access agreement in accordance with the Act and these rules.

§7. Negotiation principles for interconnection and access agreements

Licensees in negotiations for interconnection and access agreements must:

- (a) act at all times in good faith;
- (b) promptly provide information reasonably requested by the other party;
- (c) avoid obstructing or delaying negotiations;
- (d) comply with any direction given by the Bureau as to the conduct of the negotiations; and
- (e) not seek to cause the other party to withhold from the Bureau information concerning the negotiations.

§8. Interconnection and access request

- (a) A licensee (the first licensee) shall, on written request from another licensee (the second licensee), promptly negotiate and endeavor to conclude an interconnection and access agreement.
- (b) The written request presented by the second licensee shall specify, at a minimum:
 - (1) the specific interconnection services or access services requested;
 - (2) a contact person;
 - (3) an estimate of the capacity required; and
 - (4) a time and place for initial negotiations.
- (c) A copy of the request referred to in subsection (a) shall be transmitted to the Bureau by the second licensee within three (3) days of having submitted it to the first licensee.

§9. Intervention by the Bureau

- (a) If the licensees:
 - (1) have not entered into an interconnection and access agreement within thirty (30) days of a request made by the second licensee in accordance with §8. , or
 - (2) have not been able to resolve a dispute in relation to the interpretation, application, or performance of the terms and conditions of an existing interconnection and access agreement after exhausting the contractually agreed upon dispute resolution mechanisms;either licensee may request intervention of the Bureau in writing.
- (b) In the case of a request for intervention referred to in subsection (a), the Bureau shall follow the process described in Chapter III.

§10. Publication of interconnection and access agreements

- (a) Within five (5) days of having entered into an interconnection and access agreement, or an amendment to such agreement, licensees shall lodge a copy of the agreement or amendment with the Bureau.

- (b) The Bureau shall publish copies of all interconnection and access agreements, and amendments to such agreements, on its website.

Chapter III. Interconnection and access dispute resolution process

§11. Dispute resolution

In case of a request for intervention filed under §9. , the Bureau may:

- (a) determine the terms of the interconnection and access agreement including the terms contemplated by §409(a) and §410(a) of the Act and these rules, as applicable;
- (b) direct the licensees to take specified actions to reach an agreement or resolve a dispute; and/or
- (c) resolve a dispute in relation to the interpretation, application, or performance of an interconnection and access agreement.

§12. Determination of interconnection and access agreements by the Bureau

- (a) An interconnection and access agreement determined by the Bureau shall be made in accordance with §412(b) of the Act.
- (b) A licensee that is party to an interconnection and access agreement determined by the Bureau or subject to a direction made by the Bureau in accordance with this Chapter may apply to the Bureau for reconsideration of such agreement or direction under §307 of the Act.

§13. Directions issued by the Bureau

- (a) The Bureau may direct licensees to take specified actions to reach an agreement or resolve a dispute, including:
 - (1) engaging a mediator;
 - (2) engaging an arbitrator;
 - (3) adopting any other action that the Bureau may consider conducive to the licensees reaching an interconnection and access agreement or resolving a dispute on the interpretation, application, or performance of an interconnection and access agreement.
- (b) The direction shall be made by written notice to both licensees and shall, in addition to the specified actions referred to in subsection (a), provide:
 - (1) the timeline and manner for implementation of the direction;
 - (2) the manner in which any costs of implementation of the direction shall be apportioned between the licensees involved; and
 - (3) any other measure the Bureau believes necessary for implementing the direction.

§14. Consultation with licensees

- (a) The Bureau must provide both licensees with a draft interconnection and access agreement or a draft direction, and consult with both licensees on that draft, before determining the terms of the interconnection and access agreement or making the direction.
- (b) The Bureau shall conduct the consultation referred to in subsection (a) following the process described in §305(c) of the Act.

Chapter IV. Standard terms for interconnection and access agreements

§15. Interconnection and access services

- (a) The interconnection and access agreement shall identify the specific interconnection and access services provided by the licensees under the agreement.
- (b) Interconnection and access services shall be sufficiently unbundled to ensure that the second licensee is not required by the first licensee to acquire telecommunications facilities and wholesale services that the second licensee does not reasonably require in order to provide telecommunication services to its customers.

§16. Compensation

- (a) The interconnection and access agreement shall provide for compensation arrangements governing the specific interconnection and access services provided.
- (b) Parties to an interconnection and access agreement may enter into any mutually acceptable compensation arrangement consistent with the provisions of Chapter V.

§17. Non-discrimination

The interconnection and access agreement shall provide that the first licensee shall offer the second licensee service conditions and take such other measures necessary to ensure that the services offered pursuant to the interconnection and access agreement are at least equivalent to those the first licensee provides to itself, its affiliates, or any other licensee.

§18. Service levels and quality of service

The interconnection and access agreement shall establish:

- (a) service level and quality of service guaranteed by each licensee;
- (b) coordination measures and procedures for:
 - (1) monitoring service levels and quality of service;
 - (2) fault identification and clearance;
- (c) procedures to resolve service level and quality of service disputes; and
- (d) penalties for failure to meet service level and quality of service guarantees.

§19. Technical standards

The interconnection and access agreement shall establish that licensees must provide interconnection and access services and deploy equipment that comply with and are prioritized in the following order:

- (a) technical standards made by the Bureau for interconnection of licensees' telecommunications networks under §426 of the Act;
- (b) technical standards adopted by the International Telecommunication Union (ITU); or
- (c) technical standards adopted by an official standards-setting body recognized by the Bureau or by industry specifications.

§20. Billing information

The interconnection and access agreement shall ensure that the licensees provide each other such information within their possession that is necessary to allow them to provide accurate and timely billing to each other and to any other licensee, including but not limited to:

- (a) billing procedures;
- (b) payment terms and conditions; and
- (c) billing and settlement dispute procedures.

§21. Prevent harm to telecommunications networks

The interconnection and access agreement shall provide that the licensees must take all reasonable measures to ensure that interconnection and access do not cause physical or technical harm to each licensee's telecommunications network.

§22. Treatment of information

The interconnection and access agreement shall provide that each licensee must:

- (a) provide the other licensee on a timely basis such information, including technical specifications and commercially relevant information, that is reasonably required for interconnection and access and the operation of telecommunications services for each licensee's customers;
- (b) protect from disclosure any:
 - (1) sensitive information as defined in §306(e) of the Act; and
 - (2) personal information of customers,
provided by the other licensee in the course of negotiating or implementing an interconnection and access agreement; and
- (c) use information obtained under this section exclusively for the purpose for which it was supplied.

§23. Suspension or termination of the agreement and dispute resolution

- (a) The interconnection and access agreement shall stipulate the specific reasons, if any, justifying unilateral suspension or termination. Such reasons may include:
 - (1) material breach of the agreement by one party, including, but not limited to, repeated failure to make payments required under the agreement;
 - (2) insolvency of one of the parties;
 - (3) one party has surrendered its license or has had its license expire, suspended, or revoked;
 - (4) continued operation of the agreement would be unlawful or in breach of the Bureau's rules; or
 - (5) continued operation of the agreement would pose an imminent threat to life or property.
- (b) The interconnection and access agreement shall provide that, to become effective, the Bureau must first approve any unilateral suspension or termination of an agreement.
- (c) The interconnection and access agreement shall:
 - (1) provide mechanisms and processes for the parties to resolve disputes in relation to the interpretation, application, or performance of its terms and conditions; and

- (2) establish that, if the dispute has not been resolved after exhausting contractually agreed upon dispute resolution mechanisms and processes, the dispute shall be submitted by one or both licensees to the Bureau for resolution.

§24. Amendment of agreement

The interconnection and access agreement shall provide that licensees must amend the agreement should the Bureau:

- (a) establish additional standard terms for interconnection and access agreements in accordance with the Act; or
- (b) modify the standard terms for interconnection and access agreements established in these rules, as may be amended from time to time.

§25. Notification of the agreement to the Bureau

The interconnection and access agreement shall provide that the parties must submit a copy of the agreement to the Bureau no later than five (5) days of having entered into such agreement or amended such agreement.

Chapter V. Prices and pricing principles for interconnection and access

§26. Interconnection pricing approaches

- (a) Licensees shall adopt one of the following approaches to set interconnection prices:
 - (1) commercial negotiation;
 - (2) cost-based prices;
 - (3) benchmarking; or
 - (4) bill and keep.
- (b) If the licensees do not reach agreement on interconnection prices within the timeframe provided under §9. , and either the first licensee or the second licensee requests the Bureau's intervention, the Bureau:
 - (1) shall, in relation to pricing terms for termination services for fixed or mobile voice service, for short messaging service (SMS) and for Internet traffic, apply:
 - (A) a benchmarking approach consistent with §29. ; or
 - (B) a bill and keep pricing scheme consistent with §30. ; and
 - (2) may, in relation to all other disputed pricing terms,
 - (A) direct the licensees to mediation or arbitration, and may include in any direction to arbitration a requirement that disputed pricing terms be determined by the arbitrator, or an expert appointed by the arbitrator, on a cost-based price methodology or other applicable pricing methodology;
 - (B) resolve the pricing dispute directly or using an expert appointed by the Bureau through the application of a cost-based price methodology or other applicable pricing methodology; or

- (C) use such other process or pricing methodology as is available to the Bureau under the Act;
- (3) may award costs between the parties on such terms as the Bureau considers reasonable, including:
 - (A) by reference to the reasonableness or otherwise of the parties' conduct during the period provided for commercial negotiation;
 - (B) by direction to an arbitrator of guidelines for awarding of costs between the parties; or
 - (C) using such other process or cost allocation methodology as is available to the Bureau under the Act.

§27. Commercial negotiation of interconnection prices

- (a) Licensees may adopt commercially negotiated prices for interconnection services.
- (b) Commercially negotiated prices shall be reasonable.
- (c) In this section, commercially negotiated prices shall be reasonable if the Bureau determines that:
 - (1) such prices are not excessive relative to the cost of providing such service or the prices for the same or similar services observed in comparable countries as defined in §29. ; or
 - (2) such prices do not have the effect or the likely effect of lessening competition in Palau.

§28. Cost-based prices for interconnection services

- (a) Unless otherwise directed by the Bureau, cost-based interconnection prices shall be calculated employing a bottom-up, forward-looking economic cost methodology, whereby:
 - (1) capital assets used to provide interconnection services shall be valued at the current replacement cost of an asset with the same or better functionality; and
 - (2) costs incurred must reflect technology and product practices based on that of an efficient network architecture.
- (b) Where interconnection prices are calculated using a bottom up, forward-looking economic cost methodology, the price of interconnection services different from termination shall be computed using a long run average incremental cost standard, which shall include:
 - (1) all variable costs;
 - (2) such fixed costs directly attributable to the incremental change in the interconnection service; and
 - (3) the share of indirect costs that are attributable to the provision of those services.
- (c) Cost-based prices for termination services for fixed and mobile voice services and for SMS shall be calculated using a long run incremental cost standard, whereby the relevant increment is the termination service and which includes only avoidable costs.
- (d) Termination services for fixed and mobile voice services shall be billed by the second, without rounding up to the next minute increment.
- (e) For avoidance of doubt, in the calculation of prices for termination service:

- (1) costs related to additional network capacity shall be included only to the extent that they are driven by the need to increase capacity for the purpose of carrying additional wholesale termination traffic;
 - (2) spectrum fees, if applicable, shall be excluded from the termination increment; and
 - (3) only those wholesale commercial costs shall be included which are directly related to the provision of the wholesale termination service to third parties.
- (f) In this section, “avoidable costs” means the difference between:
- (1) the identified total long run costs of a licensee providing its full range of telecommunications services; and
 - (2) the identified total long run costs of the licensee providing its full range of telecommunications services, except for the wholesale termination service supplied to any third party (which costs exclude non-traffic-related costs).

§29. Benchmarking

- (a) Licensees may use benchmarking against cost-based prices set by regulators in comparable countries as a pricing approach for the provision of termination services for fixed and mobile voice services, for SMS, and for Internet traffic.
- (b) For purpose of this sections, Small Island Developing States (SIDS) as defined by the United Nations, among others, may be considered to be comparable countries.

§30. Bill and keep approach

- (a) Licensees may use bill and keep as a pricing approach for the provision of interconnection services for fixed and mobile voice services, for SMS, and for Internet traffic.
- (b) Under bill and keep, the price for termination services is set equal to zero.

§31. Access pricing principles

- (a) Licensees shall adopt one of the following approaches to set prices for access to essential facilities:
 - (1) commercial negotiation;
 - (2) cost-based prices, which may include a reasonable profit to reflect the risk of investment; or
 - (3) retail-minus prices, which may be based on the actual costs that the licensee will avoid by providing the service on a wholesale, rather than retail basis.
- (b) If the licensees do not reach agreement on access prices within the timeframe provided under §9. , and either the first licensee or the second licensee requests the Bureau’s intervention, the Bureau:
 - (1) may direct the licensees to mediation or arbitration and may include in any direction to arbitration a requirement that disputed pricing terms be determined by the arbitrator, or an expert appointed by the arbitrator, on a cost-based price methodology or other applicable pricing methodology;
 - (2) may resolve the pricing dispute directly using a cost-based price methodology, or use such other process or pricing methodology as is available to the Bureau under the Act;

- (3) may award costs between the parties on such terms as the Bureau considers reasonable, including by:
- (A) reference to the reasonableness or otherwise of the parties' conduct during the period provided for commercial negotiation;
 - (B) direction to an arbitrator of guidelines for awarding of costs between the parties; or
 - (C) using such other process or cost allocation methodology as is available to the Bureau under the Act.

§32. Interconnection and access pricing principles

- (a) Interconnection and access prices shall adhere to the principle of cost-causality, where costs shall be borne by the licensee whose activities cause those costs to be incurred.
- (b) Interconnection and access prices shall ensure that:
 - (1) non-recurring costs are recovered through non-recurring charges and recurring costs are recovered through recurring charges; and
 - (2) costs that do not vary with usage are recovered through flat charges and costs that vary with usage are recovered through charges that are based on usage.
- (c) Prices for interconnection and access services shall be sufficiently unbundled so that the second licensee is only required to pay for the network elements and services that it requires.

§33. Costs of establishing physical interconnection and access

- (a) Unless otherwise directed by the Bureau, each licensee will be responsible for providing and maintaining that part of the interconnection link leading from its network to the point of interconnection.
- (b) For a jointly constructed interconnection link, each licensee will be responsible for the cost of establishing and maintaining that link based on a reasonable expectation of the link's relative use between the interconnecting parties.

Chapter VI. Designated mandatory services

§34. Designated mandatory services

- (a) Pursuant to §413(b) of the Act, the Bureau designates the following mandatory interconnection services:
 - (1) physical and logical interconnection;
 - (2) basic interconnection services;
 - (3) co-location; and
 - (4) ancillary interconnection services.
- (b) Licensees may agree to include additional services in the interconnection and access agreements that they negotiate under Chapter II.

§35. Physical and logical interconnection

- (a) The provision of physical and logical interconnection shall ensure the exchange of telecommunications traffic between licensees.
- (b) Licensees shall make the following information publicly available to ensure physical and logical interconnection:
 - (1) a list and description of the points of interconnection at which the second licensee may physically and logically interconnect with the first licensee;
 - (2) a description of the physical and logical interfaces to the first licensee’s telecommunications network necessary to allow physical and logical interconnection; and
 - (3) the procedures if the first licensee alters such interfaces.
- (c) Licensees shall make publicly available, not less than six (6) months prior to deployment, information on any change in logical or physical interfaces to their telecommunications networks that could materially affect existing interconnection and access agreements.
- (d) Interconnection shall occur at any technically feasible point of interconnection of the first licensee’s telecommunications network, including, but not limited to:
 - (1) interconnection gateway switches; and
 - (2) local switches.
- (e) Two licensees may interconnect virtually with each other.
- (f) The first licensee must provide, and may require from the second licensee, sufficient capacity to meet forecasted traffic.
- (g) Licensees must provide signaling plans, technical specifications, interconnection test plans, and corresponding test schedules when requested.
- (h) In this section, making information “publicly available” means a licensee keeping such information up-to-date and providing to other licensees upon request.

§36. Basic interconnection services

- (a) Basic interconnection services shall include:
 - (1) origination services allowing one licensee’s customers to use another licensee’s telecommunications network to initiate telecommunications traffic;
 - (2) transit services allowing the originating licensee’s customers to route traffic through another licensee’s (transit provider) telecommunications network that terminates on a network different from the transit provider’s telecommunications network; and
 - (3) termination services allowing the originating licensee’s customer to terminate traffic on the terminating licensee’s network, enabling those customers to establish one-way or interactive telecommunications.
- (b) Licensees shall agree to the specific basic interconnection services included in an interconnection and access agreement.

§37. Co-location

- (a) Licensees must offer to co-locate equipment at any technically feasible location within their telecommunications network.
- (b) Co-location shall include the provision of equipment space, power, security, and site maintenance at each co-location site.
- (c) In cases where physical co-location is not possible due to space limitations or other legitimate reasons, licensees must take reasonable measures to make available alternative solutions, including but not limited to:
 - (1) providing options for virtual co-location,
 - (2) conditioning additional equipment space,
 - (3) optimizing the use of existing space; or
 - (4) finding adjacent space.
- (d) Licensees must provide the owners of equipment co-located in locations within their telecommunications networks access to such equipment on a 7-days-a-week, 24-hours-a-day basis, subject to reasonable security precautions.

§38. Ancillary services

Ancillary services include:

- (a) arrangements for the provision of equal access and number portability, where applicable;
- (b) access to services including emergency, free-phone and toll-free numbers, directory assistance, and SMS termination services, where applicable, and any other services specified by the Bureau via written order;
- (c) access to special access services, including premium rate services, where applicable; and
- (d) arrangements for measuring traffic and billing.

Chapter VII. Access to essential facilities

§39. Access to essential facilities

- (a) The first licensee shall agree to, and take all reasonable steps required to give effect to, reasonable requests for access to, and use of, essential facilities it owns or controls.
- (b) A licensee may only refuse to grant access to essential facilities it owns or controls in accordance with §42.

§40. Duty to reject discriminatory preferences

A licensee shall not accept or request access to essential facilities and related services that are owned or under the control of:

- (a) a person unrelated to the licensee; or
 - (b) an affiliate to that licensee,
- on prices, terms and conditions that are not available to other licensees.

§41. Duty to abstain from undue influence

A licensee shall not engage, directly or indirectly, in any conduct, action or omission to influence, in any manner:

- (a) a person unrelated to the licensee; or
- (b) an affiliate to that licensee,

to unreasonably refuse granting access to essential facilities that such person or such affiliate may own or control.

§42. Refusal to grant access

- (a) If the first licensee refuses to grant or impedes access to essential facilities it owns or controls on technical, economic, or legal grounds, such claims shall be subject to independent verification by the Bureau following a request made in accordance with §9. .
- (b) Technical grounds for refusing to grant or impede access may exist if:
 - (1) the provision of access materially adversely affects security, performance, or efficiency of the first licensee’s telecommunications network; or
 - (2) space limitations on the essential facility exist that cannot be resolved by the first licensee through optimizing the use of existing space or other reasonable measures.
- (c) The Bureau may direct the first licensee to produce any records and documents in connection with its refusal to grant an access request and the Bureau or its authorized personnel may enter premises to inspect the relevant facilities to determine the reasonableness or otherwise of the refusal of access.

§43. Reservation of capacity on essential facilities

- (a) Licensees shall have the right to reserve capacity on essential facilities they own or control and for which they have made long term investments, provided this reservation does not adversely affect or is not likely to adversely affect competition.
- (b) Where a licensee reserves capacity on an essential facility it owns or controls:
 - (1) the reservation period shall not exceed two (2) years after which the right will cease from being operational; and
 - (2) capacity reserved shall not exceed twenty percent (20%) of spare capacity on the specific essential facility.
- (c) Information and documentary evidence of the reservation and extent thereof must be held by the licensee and shall be made available to the Bureau upon request.

Chapter VIII. Access to BSCC facilities

§44. Open access to BSCC facilities

- (a) BSCC must provide open access to submarine fiber cables and associated facilities it owns or controls in accordance with Chapter VIII of the Act.
- (b) BSCC shall establish transparent internal processes, dispute resolution process and other commercial terms and conditions necessary to give effect to subsection (a).

- (c) For purpose of this section, open access means:
- (1) the provision of wholesale services over facilities deployed by BSCC pursuant to Chapter VIII of the Act;
 - (2) to all licensees that request such access in a manner consistent with BSCC's internal processes;
 - (3) on an equal and commercially reasonable basis.

Chapter IX. Reference interconnection and access offers

§45. Transparency obligation

A licensee that is a dominant services provider in a telecommunications market is obliged to present a reference interconnection offer or a reference access offer as directed by the Bureau, pursuant to the requirements set forth under §411 (b)-(h) of the Act.

§46. Publication of the reference offer

Upon approval by the Bureau, the full text of reference interconnection offers and reference access offers shall be published:

- (a) on the dominant service provider's website; and
- (b) on the Bureau's website.

§47. Content of the reference offer

Reference interconnection offers and reference access offers shall include, as applicable:

- (a) the standard terms and conditions identified in Chapter IV;
- (b) pricing terms and conditions consistent with the provisions of Chapter V; and
- (c) mandatory services offered in accordance with Chapter VI.

Chapter X. Penalties

§48. Penalties for breach of interconnection and access obligations

A licensee who willfully fails in its negotiated or arbitrated obligation to provide interconnection and access to other licensees commits an offense and, upon conviction of an offense, may be subject to the following penalties:

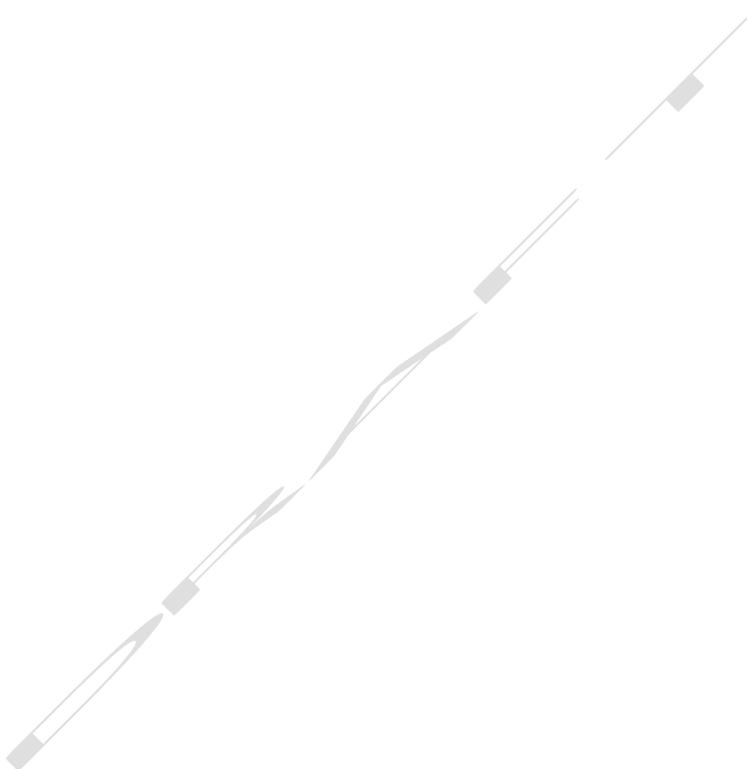
- (a) fines within the thresholds set for in §451 of the Act;
- (b) compensatory damages payable to the affected licensee; and/or
- (c) revocation of the license if the failure is not corrected following direction of the Bureau or arbitration.

Chapter XI. Transitional provisions

§50. Existing interconnection and agreements

- (a) Interconnection and access agreements executed and in force prior to the effective date of these rules shall be amended by the parties, as needed, to fully comply with these rules.

- (b) Within 90 days of the effective date of these rules, the parties to the agreements identified in subsection (a) shall transmit the amended agreement to the Bureau for purposes of publication in accordance with §10.



Schedule 1: Designation of essential facilities

§1. Essential facilities to which access must be granted

The following facilities are identified as essential facilities in accordance with §410(a) of the Act:

- (a) towers and other supporting structures for the provisions of radio communications services;
- (b) poles, masts, ducts, conduits, inspection chambers, manholes, cabinets, and similar passive infrastructure; and
- (c) submarine cable landing stations.

§2. Identification of additional essential facilities

The Bureau may identify additional essential facilities by written order issued following a consultation pursuant to the second sentence of §305(a) of the Act.

