



A Final Draft

Recommendations for Access to Facilities Regulations

Maintenance History		
Date	Change Details	Version
June 13, 2005	Version 1, Initial Draft Completed	0.1
September 23, 2005	Revision based on consultation. Version 2 completed.	0.2

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1 Introduction

1.1 Access to Facilities Regulations

This is the second draft of the Access to Facilities Regulations 2005, and has been amended following a first round of consultation which commenced on 1 July 2005 and closed on 15 July 2005. The issues addressed in this document were initially addressed in the Interconnect Regulations published by the Authority for consultation on 11 October 2004. Following that consultation the Authority determined that access to facilities would more appropriately be addressed in a separate document from interconnection (in line with the appropriate sections of the Telecommunications Act).

The original draft is available on the website of the Authority (www.tatt.org.tt/). A consolidated matrix of the comments received in relation to the first draft, the recommendation made, and the Authority's decisions on those recommendations is attached as Appendix I. The draft regulations have been amended to take into account the comments and recommendations made, but also to address the additional issues raised in section 2 of this document.

As the issues in this document have already been consulted upon on two occasions, this second draft of the regulations is the final draft.

The Access to Facilities Regulations 2005 will now be submitted to the Minister for approval, and promulgation by negative resolution of Parliament in accordance with section 78 of the Act.

1.2 Relevant Legislation

The relevant Sections of the Telecommunications Act which were taken into consideration in the framing of the Access to Facilities Regulations are:

Section 26 of the Telecommunications Act 2001 which states:

“(1) Subject to the provisions of this section, it shall be a further condition of a concession for a public telecommunications network and broadcasting service that the concessionaire be required to provide other concessionaires with access to the facilities that it owns or controls, such access not to be unreasonably withheld.

(2) Access to facilities shall be negotiated between concessionaires on a nondiscriminatory and equitable basis and, at the request of either party, the Authority may assist in negotiating a settlement between such parties.

(3) A concessionaire may deny access only where it demonstrates that there is insufficient capacity in the facility, taking into account its reasonably anticipated requirements and its obligations pursuant to section 27, or, for reasons of safety, security, reliability or difficulty of a technical or engineering nature.

(4) The Authority may regulate the rates, terms and conditions for access to any facility, such rates, terms and conditions to be just and reasonable and it may adopt procedures necessary and appropriate to facilitate, by such means as the Authority deems appropriate, the determination of complaints concerning such rates, terms and conditions.

(5) For the purposes of this section, access to facilities does not include interconnection.”

1.3 Objectives

The primary objective of the Access to Facilities Regulations is to provide an effective framework for concessionaires to access the facilities of other concessionaires in order to:-

- ensure the effective liberalization of the telecommunications sector and the introduction of competition;
- facilitate the provision of a wide range of telecommunications services for both public and private use; and,

- ensure fair, non-discriminatory access among concessionaires to facilitate the orderly development of telecommunications in the Republic of Trinidad and Tobago.

1.4 Review Cycle

This document will be modified as deemed necessary by the Authority, subject to the approval of the Minister and Parliament, in order to adapt to the needs of the telecommunications industry and to meet changing circumstances. When need for modification is identified, the Authority will announce its intention to review the document and any interested party or entity in the telecommunications sector or any appropriate industry forum may suggest changes to the document.

Questions or concerns regarding the maintenance of this document may be directed to the Authority via email at policy@tatt.org.tt.

1.5 Other Relevant Documentation

The Access to Facilities Regulations are prescribed alongside other policies, plans and regulations prepared by the Authority including the following:-

- Policy on the Authorization of Telecommunications Networks and Services and Broadcasting Services in Trinidad and Tobago.
- Interconnection and Access to Facilities Policy.
- Interconnection Regulations.

The following additional documents, in the process of preparation will also impact upon the matters dealt with in the Access to Facilities Regulations:-

- Quality of Service Policy
- Consumer Rights and Obligations

2 Significant Amendments

- The document has been reorganised substantially.
- In accordance with the Telecommunications Act 2001, the concept of dominant operator has been removed throughout the Regulations. All of the requirements set out in the Regulations are now mandated upon all relevant concessionaires.
- The requirement to supply information and the mechanism for obtaining an exemption of particular information, have been clarified.
- The concept of an “access request” has been added, to clarify the expected content of a request for access. Clear timeframes for responding to an access request are included.
- Provision has been made to enable a prospective concessionaire to make an access request, subject to the provision of adequate security.
- The time to conclude an access agreement has been modified to provide different timeframes for particular circumstances.
- Access rates have been made reciprocal between concessionaires for equivalent interconnection in equivalent circumstances.
- A right for the Authority, at its discretion, to attend meetings for the negotiating of access has been included.
- A section providing conditions for the implementation of access agreements has been included to provide clear timeframes within which effective access must be achieved following negotiating of an agreement.
- A right for the Authority to impose interim arrangements for access has been included to provide for access during disputes. Penalties have been included for failure to implement any such arrangement.

- A general penalty for breach of the Regulations has been included.

3 Draft Access to Facilities Regulations – Version 2

REPUBLIC OF TRINIDAD AND TOBAGO

THE TELECOMMUNICATIONS ACT (ACT NO: 4 of 2001)

REGULATIONS

Made by the Minister under section 78(1) of the Telecommunications Act

ACCESS TO FACILITIES REGULATIONS, 2005

PART I PRELIMINARY

- | | |
|----------------|---|
| Citation | <ol style="list-style-type: none">1. These Regulations may be cited as the Access to Facilities Regulations, 2005, hereinafter referred to as the “Regulations”.2. These Regulations provide and establish directives on issues regarding access to facilities used for public telecommunications or broadcasting services in the Republic of Trinidad and Tobago. |
| Interpretation | <ol style="list-style-type: none">3. (1) In these Regulations:

<p>“Access agreement” means a binding agreement between concessionaires for an access seeker to obtain access to the facilities of an access provider in accordance with section 26(2) of the Act.</p><p>“Access charge” means any charge for access to any facility of a public telecommunications network or broadcasting services concessionaire.</p><p>“Access provider” means the concessionaire which is providing access to its facilities to an access seeker.</p><p>“Access request” means a request made in accordance with Regulation 7 for access to the facilities of a concessionaire.</p><p>“Access seeker” means the concessionaire which is seeking access to the facilities of another concessionaire.</p> |

“Collocation” means provision of space at the premises of an access provider for the use of an access seeker for the installation of equipment or otherwise in connection with its public telecommunications network or broadcasting services. For the purpose of these regulations, access includes collocation.

“Concessionaire” means a person or an entity authorized to operate a public telecommunications network or provide a broadcasting service under section 21 of the Act.

(2) Terms not otherwise defined in these Regulations shall have the meaning given in the Act.

PART II OBLIGATIONS OF CONCESSIONAIRES

General obligation to provide access to facilities

4. A holder of a concession for the provision of a public telecommunications network or broadcasting service shall:
 - a) provide access to its facilities (including collocation), and such access shall not be unreasonably withheld;
 - b) negotiate in good faith on matters concerning access to facilities;
 - c) neither withdraw nor impair access once already granted, save where authorized by the Authority, a dispute resolution process in accordance with section 82 of the Act, or a court of law.

5. Without prejudice to the generality of the foregoing, a concessionaire shall provide access to the following facilities:
 - a) Local loop;
 - b) Line side facilities, including but not limited to, the connection between a loop termination at the main distribution frame and the switch line card;
 - c) Trunk side facilities including, but are not limited to, the trunk-side cross connect panel and a switch trunk card;
 - d) Trunk connect facilities, including but not limited to, the connection between trunk termination at the cross connect panel and a switch trunk card;

- e) Interoffice transmission facilities;
- f) Signaling networks, including but not limited to, signaling links and signaling transfer points;
- g) Service control points.

Conditions of access to be non-discriminatory 6.

(1) A concessionaire shall apply equivalent conditions in equivalent circumstances to all other concessionaires, and provide access to facilities under the same conditions and of the same quality as it provides to itself, or to its subsidiaries or partners.

(2) Where a concessionaire fails to comply with subsection (1) it must prove to the Authority that it is not feasible to replicate the quality level of the access provided for its own use.

7. (1) Previous successful access to a facility at a particular point on a network is evidence of feasible access at that point, or at a similar point on the networks where similar facilities are used.

(2) Adherence to the same interfaces or protocol standards at other points of the network shall constitute evidence of similar facilities.

Requirement to specify availability of collocation 8.

A concessionaire shall specify, upon request from an access seeker, the availability of collocation within its facilities, including:

- a) information on the relevant sites along with security arrangements and conditions;
- b) collocation options at the relevant sites;
- c) restrictions, if any, on equipment which can be co-located;
- d) security standards and measures to be put in place by access seekers to guarantee security;
- e) principles governing allocation of collocation space to access seekers;
- f) principles governing the rights of entry to collocation

space by access seeker's staff.

Requirement to supply information for access

9. (1) Subject to subsection (3) below, a concessionaire shall supply to any other concessionaire upon request, such information about its network and services as is required in relation to procuring access to the concessionaire's facilities.

(2) The information referred to in subsection (1) shall be supplied within twenty-eight (28) days of a request to do so unless an extension is granted by the Authority. The concessionaire requested to provide the information may request an extension in writing from the Authority not later than seven (7) days before the deadline for supply of the information.

(3) The Authority may exempt particular information from the requirements of sub-section (1) on the grounds of confidentiality or competitive sensitivity, subject to the following procedure:

- a) A concessionaire seeking to have information so exempted shall make a written request to the Authority, copied to the concessionaire requesting the information, not later than seven (7) days before the deadline for supply of the information.
- b) The concessionaire requesting the information may make representations to the Authority on the request for exemption, such representations to be provided to the Authority within 7 days of receipt of the request for exemption.
- c) The Authority shall notify both interested concessionaires of its determination within 21 days of the request. The Authority may include in its determinations such reasonable conditions for the disclosure as it considers appropriate, including the manner of provision of the information, and the time for such provision. The Authority shall be entitled to grant an exemption in relation to part only of the request made.

(4) The Authority may revoke an exemption granted under sub-subsection (3) at the request of any concessionaire where there has been a material change in the relevant circumstances, but shall in such case afford to both relevant

parties a reasonable opportunity to make submissions.

(5) All information provided under this Regulation 7 shall be used for the purpose of facilitating access only, and shall not be disclosed to any third party without the prior express written permission of the concessionaire which provided the information. A concessionaire receiving information under this regulation shall, prior to receipt of the information, execute a Non-disclosure Agreement in the form of Schedule A, for the benefit of the concessionaire disclosing the information.

PART III

NEGOTIATING ACCESS AGREEMENTS

Access request

10. (1) Each concessionaire shall provide the Authority with a designated contact or contacts for the service of access requests, and shall make sufficient provision to ensure that access requests are dealt with promptly.

(2) A concessionaire may make an access request at any time. Access requests shall be sent to the designated contact provided by the access provider under subsection 7(1), or if no contact has been provided, the registered address of the access provider.

(3) An access request shall, unless otherwise agreed between the Access Provider and the Access Seeker, include as a minimum:

- a) The reference number of the access seeker's concession (or proof of a submitted application for a concession);
- b) The facility or facilities to which access is required;
- c) Details of the access required;
- d) Date by which access is required;
- e) The period for which access is required;
- e) Details of any equipment to be installed at the facility, together with details of the security, safety, environmental, and spatial requirements of such equipment;

- f) The extent to which access is required by the access seeker's personnel to the facility to install, maintain or use the equipment to be installed.

(4) The access request shall be copied to the Authority.

(5) The access provider shall acknowledge receipt of the access request within seven (7) days. The access provider may request at such time any further information that may reasonably be required, such request to be copied to the Authority and complied with by the access seeker within seven (7) days of receipt. In the event that a reasonable request for further information is not complied with within such period, the period set out in Regulation 14 for negotiating the access agreement shall be increased by a period corresponding to the delay in provision of the information.

(6) Nothing in this section shall prevent any person who has applied to the Authority for a concession under section 21 of the Act, but to whom a concession has not been granted (a "concession applicant) from making a valid access request. The effecting of access in accordance with such access request shall be conditional upon the grant of a concession to the concession applicant, and the concession applicant shall provide to the access provider at the time of the access request such security as the access provider may reasonably require to indemnify the access provider from any losses that may be suffered in the event that the concession applicant's application for a concession is unsuccessful.

Time for conclusion of access agreement

- 10. A concessionaire shall use all reasonable endeavours to conclude an access agreement within forty-two (42) days of the receipt of an access request, unless such period has been expressly extended by the Authority in writing, or pursuant to subsection 9(5). Failure to do so shall constitute a dispute referable to the Authority under Regulation 25.
- 11. An access agreement shall include prices for access to facilities as well as the technical, operational, billing and planning conditions for access.
- 12. The terms and conditions for access contained in the any access agreement under which a concessionaire is the access

provider, shall be available to any other concessionaire to whom that concessionaire provides equivalent access in equivalent circumstances. Each access agreement shall contain provisions providing for amendment or modification to effect the provisions of this section, and such amendment or modification shall be effected within fourteen (14) days of a request from the relevant access seeker. Failure to do so shall constitute a dispute referable to the Authority under Regulation 25.

13. Access charges for equivalent access in equivalent circumstances shall be reciprocal between concessionaires.

Attendance by Authority
at meetings

14. The Authority shall at its discretion upon the giving of twenty-four (24) hours prior notice, be entitled to attend and take part in any meeting for the purpose of negotiating access, and the parties shall ensure that the Authority is informed of all such meetings scheduled. The Authority shall have no more than three (3) representatives at any such meeting, and the parties shall ensure that adequate accommodation is provided for the Authority representatives. Attendance by the Authority shall not be grounds for the cancellation or postponement of a meeting and shall not exempt any party from its obligations under Regulation 10. Neither party shall be required to comply with any directions given or decision made by the Authority at such negotiations.

Approval of access
agreements

15. (1) All access agreements or modifications to access agreements must be submitted to the Authority within seven (7) days of signature by the parties.

(2) The Authority may, within twenty-one (21) days of the submission of any access agreement or modification, serve notice on the parties to the agreement requiring any change to the rates or any other term or condition of the access agreement, or inclusion of any additional term or condition, subject to such change or addition being just and reasonable in all the circumstances. Any such change shall be effected by the parties within fourteen (14) days of service of such notice, and the modified agreement resubmitted to the Authority for consideration under this Regulation 15.

(3) A concessionaire that fails to comply with any direction by the Authority under this Regulation 15 shall, without prejudice to any other applicable fines or remedies under the Act or otherwise, or any compensation payable in any dispute resolution proceedings, be subject to such daily

fine of up to fifty thousand dollars (\$50,000) per day from the date on which the change was to be effected under subsection 15(2) until the date of compliance, as the Authority considers appropriate having regard to the benefit that may be gained by the party in breach and the loss suffered by the other party to any relevant access agreement.

Publication of access agreement

16. Access agreements shall be published by the Authority within fourteen (14) days of acceptance by the Authority.

PART IV COMMERCIAL ARRANGEMENTS

Access charges

17. All access charges shall be just and reasonable.
18. (1) A concessionaire shall set access charges based on its costs determined by such costing methodologies, models or formulae as the Authority may from time to time specify.

(2) Where the relevant data for the application of the costing methodologies, models or formulae in reference at subsection (1) are unavailable or not available within a reasonable time period, access charges may be set with reference to benchmarks of equivalent access services in other countries and/or prices for similar services in Trinidad & Tobago.
19. A concessionaire shall within twenty-eight (28) days of a written request from the Authority, supply to the Authority such data as the Authority reasonably requires to demonstrate that its access charges are in accordance with Regulation 18.

PART V IMPLEMENTATION OF ACCESS AGREEMENTS

20. An access agreement shall stipulate a time within which access shall be effected. Such period shall, except with the prior approval of the Authority in writing, such approval not to be unreasonably withheld, be no less than twenty-eight (28) days.
21. A concessionaire shall use all reasonable endeavours to effect access within twenty-eight (28) days of concluding the relevant access agreement, or such longer period approved by

the Authority.

22. An access provider shall not do any act which deprives an access seeker of any benefit granted in any access agreement, unless in accordance with that access agreement, or with the prior written consent of the Authority.
23. In the event that access requires any modification of an access provider's facilities, the reasonably incurred costs of such modification shall be recoverable from the access seeker, such costs to be determined in accordance with such methodology as the Authority may prescribe.

PART VI DENIAL OF ACCESS REQUESTS

Grounds for denial of
access request

24. (1) A request for access at a particular location may only be denied where there is insufficient capacity, or for reasons of safety, security, reliability or difficulty of a technical or engineering nature.

(2) A denial of access must be notified to the access seeker and the Authority within fourteen (14) days of receipt of the access request. The Authority may require an access provider to provide justification for its denial. Such justification must be submitted to the Authority in writing within seven (7) days of receipt of the Authority's written request to do so.

(3) The Authority may,

- a) require the production of any records or documents of the access provider; and/or,
- b) with the agreement of the access provider, enter the premises of the access provider and inspect any and all relevant facilities;

to determine the reasonableness of any denial of access.

Direction by Authority
where access
unreasonably denied

(4) Where the Authority deems that the access has been unreasonably withheld it may instruct the access provider in writing to make arrangements for access within a time specified by the Authority. Such instruction may include such reasonable interim terms and conditions for access as the Authority may consider appropriate, such terms and conditions to apply until such time as an access agreement

has been concluded between the parties.

Modification of facilities
to accommodate access

(5) The Authority may, in connection with an instruction given under subsection (4), require a concessionaire to modify its facilities to provide access. In making such a requirement the Authority shall take into account any relevant factors which may include but are not limited to the extent to which the access requested impacts on the networks or services of the access seeker, the availability and cost of alternatives, and the cost of any required modifications. The reasonably incurred costs of such a modification shall be recoverable from the access seeker or seekers, such costs to be determined in accordance with such costing methodology as the Authority may prescribe.

(6) A concessionaire that fails to comply with any direction by the Authority under this Regulation 248 shall, without prejudice to any other applicable remedies under the Act or otherwise, or any compensation payable in any dispute resolution proceedings, be subject to a fine of up to fifty thousand dollars (\$50,000) as the Authority considers appropriate, having regard to the benefit that may be gained by the concessionaire in breach and the loss suffered by any other concessionaire as a result of the failure to comply.

PART VIII DISPUTE RESOLUTION

Request for consultation
and guidance

25. Where difficulty arises in respect of any access matter under negotiation, the matter may on the agreement of both parties, be referred to the Authority for consultation and guidance prior to either party submitting the matter to the Authority as a dispute.

Referral of dispute in
accordance with
Enforcement and
Compliance Regulations

26. Save as provided in Regulation 25 above, all disputes regarding access shall be submitted to the Authority for resolution in the manner specified within the dispute resolution procedures established by the Authority under section 82 of the Act. Referrals shall be made by any party to a dispute serving a written notice of dispute on the Authority and the other party or parties to the dispute. Dispute resolution proceedings are deemed to be initiated upon receipt by the Authority of the notice of dispute.

Interim arrangements

27. The Authority may in relation to any dispute referred under these Regulations, direct that the parties shall implement such interim arrangement for access as the Authority considers

appropriate having regard to the nature of the dispute. Such arrangement may include prices and any other term or conditions for access and the Authority shall consider such submissions as may be made by the parties in the formulation of such arrangement, subject to such timeframes for submissions as the Authority shall in its sole discretion set. The arrangement shall be instituted by the parties within a reasonable period as set by the Authority and shall continue until such time as the dispute has been finally resolved.

28. A concessionaire that fails to implement an interim arrangement as directed by the Authority under Regulation 27 above shall, without prejudice to any other applicable remedies under the Act or otherwise, or any compensation payable in any dispute resolution proceedings, be subject to a fine of up to fifty thousand dollars (\$50,000), as the Authority considers appropriate having regard to the benefit that may be gained by the party in breach and the loss that may be suffered by the other party to the arrangement.

29. In the event that an interim arrangement has been made under Regulation 27 above, the final resolution of a dispute shall be effective on the date on which the interim arrangement was effected, and shall include provisions for compensation to any party (by the other party or parties) that has suffered any loss and damage as a result of the interim arrangement.

Penalty for breach of Regulations

30. A concessionaire who breaches any provision of these Regulations shall, without prejudice to any other applicable remedies under the Act or otherwise, or any compensation payable in any dispute resolution proceedings, be subject to such fine of up to fifty thousand dollars (\$50,000) as the Authority considers appropriate.

Made this day of 2005.

Minister of Public Administration and
Information

Laid in the House of Representatives this day of 2005.

Clerk of the House

Laid in the Senate this day of 2005.

Clerk of the Senate



4 Decisions on Recommendations – Access to Facilities Regulations Version 1

Document Sub-Section	Submission Made By (Stakeholder Category ¹)	Comments Received	Recommendations Made	TATT's Decisions
GENERAL				
	Ministry of Public Administration and Information	<p>1) Lack of technology and service neutrality,</p> <p>Despite the ideals of neutrality discussed in the Authorisation and Interconnection policies, these regulations are extremely service (voice), and technology (circuit switched) specific. This is evidenced by the use, almost exclusively, of terms such as “Call”, “Local Loop”, “Exchanges” & “Main Distribution Frame” which connote both a specific service and network architecture.</p> <p>Is this ideal in the ‘converged’ regulatory approach discussed in the Authorisation Policy? How do these regulations address the likely situation where the interconnecting concessionaire requests links for solely data traffic?</p>		

¹ Regional regulatory or Governmental agencies, Existing service and/ or network provider and affiliates, Potential service and/ or network providers and affiliates, Service/ Network Provider Associations/ Clubs/ Groups, General Public

Document Sub-Section	Submission Made By (Stakeholder Category ¹)	Comments Received	Recommendations Made	TATT's Decisions
		<p>2) Lack of consideration on how the negotiated interconnection price is to be managed.</p> <p>As stated in the comments for the policy, there is no indication of how TATT intends to address the possibility that concluded negotiations may provide for high interconnection rates. This is a major flaw, which, if not addressed could compromise the entire liberalisation initiative.</p> <p>3) Lack of clarity on how concessionaire eligibility is to be implemented</p> <p>More interesting; are the rights and obligations interconnection agreements between network providers and service providers equal to that of peers (network to network, service to service)? As the act envisions an environment where the two aren't interchangeable, it is interesting that these regulations implicitly treat them as such. Since the policy provides treatment for interconnection of switched telephony, this weakness is to be expected.</p> <p>It is assumed that the eligibility concept was considered in order to facilitate why network</p>		

Document Sub-Section	Submission Made By (Stakeholder Category¹)	Comments Received	Recommendations Made	TATT's Decisions
		<p>or service providers of lower functional capability (including those that are given Class Concessions) do not have the right to the same interconnection agreement, terms and conditions as the DFTN, DMTN and INTN concessionaire. There appears to be nothing in the Act that restricts a concessionaire from the rights and obligations of interconnection, regardless of size.</p> <p>Regarding reciprocity, if these are the instances where the intended reciprocity clause is to be enforced, what alternative benefit or advantage is proffered to encourage small operators who gain class concessions to register in the new management framework as opposed to attempting operation 'under the radar' of TATT?</p>		
<p>Part II General Obligations Paragraph 5 and</p> <p>Part V Collocation Paragraph 12</p>	<p>Antilles Crossing</p>	<p>Antilles Crossing believes that it would be in the public interest and facilitate interconnection if all concessionaires were required to file with TATT on an annual basis a technical schematic which indicates, the network interface points, the trunk side switching facilities available at such location, collocation availability and</p>		<p>TATT will require Network plans and other information on an annual or other basis. The extent of the information that TATT will require concessionaires to file will be determined and communicated to</p>

Document Sub-Section	Submission Made By (Stakeholder Category ¹)	Comments Received	Recommendations Made	TATT's Decisions
		tower or rooftop antenna facilities. In addition, the domestic fibre routings operated by any concessionaire should be filed with TATT in order to allow non-dominant concessionaires to plans their network facilities and minimize physical disruption to sidewalks and roadways.		concessionaires. The issue of the availability of such information to other concessionaires or the public will also be determined by TATT.
Part III Service Level Agreement (SLA) Obligations on Dominant Concessionaire	Association of Independent Internet Service Providers.	This part should include a TATT approved SLA obligation on the dominant concessionaire. Empirical evidence from international jurisdictions has shown the importance of SLA obligations, especially for unbundled network elements. Although Part IV (10) mandates "access to facilities under the same conditions and of the same quality", a SLA obligation would further ensure that nondiscrimination extends to bilateral agreements and includes a framework for penalties in the event of unacceptable quality of service on any facilities provided by the dominant concessionaire.		Quality of service is primarily an interconnection issue. Service levels are dealt with primarily in the Quality of Service Regulations, and the SLA is provided for in the Reference Interconnection Offer.
Section 2				
	TSTT	In accordance with Section 26 (1) of the Act	TSTT suggests that the last statement	TATT will amend the citation

Document Sub-Section	Submission Made By (Stakeholder Category ¹)	Comments Received	Recommendations Made	TATT's Decisions
		No. 4 of 2000, it is a requirement of any concessionaire of a public telecommunications network and broadcasting service to provide access to their facilities. In this context, given that all concessionaires shall provide access to their facilities, the concern over access to facilities that cannot be economically replicated does not arise.	contained in Section 2 be deleted. Hence, Section 2 should read: <i>"These Regulations provide and establish directives on issues regarding access to facilities used for public telecommunications or broadcasting services in the Republic of Trinidad and Tobago"</i>	along the lines proposed.
	Illuminat (Trinidad & Tobago) Limited	Refers to facilities that cannot be economically replicated What factors will determine which facilities qualify for such treatment	Regulations should offer some guidelines that will prevent frustration of the policy	TATT will delete the provision that refers to economic replication of facilities.
Section 3				
"Access Agreement"	TSTT	TSTT concurs with the Authority that Access Agreements are commercially negotiated between concessionaires as explicitly states in Section 26(2) of Act No.4 of 2001. However, TSTT wishes to draw to the Authority's attention that access to facilities as defined in the Act pertains to infrastructural access and not network	<i>TSTT recommends that the definition of "Access Agreement" be revised to reflect Act No. 4 of 2001 definition of "Facilities". TSTT suggest therefore, the following definition be used: "Access Agreement" means a document detailing arrangements as negotiated and agreed between parties for access to</i>	TATT will remove the concept of access provider's network from the definition. However, TATT does not agree that "facility" as defined in the Act, does not include network elements.

Document Sub-Section	Submission Made By (Stakeholder Category ¹)	Comments Received	Recommendations Made	TATT's Decisions
		<p>access. The definition of “facility” in the Telecom Act specifically omits wires, lines, cables or other equipment used for telecommunications. Instead, “facility” is defined to include any post, pole, tower, standard bracket, conduit, or similar thing used for carrying, suspending, supporting or protecting the structure. The Access to Facilities Regulations should only cover infrastructure facilities. They should not cover any aspect of unbundling or access to network elements.</p>	<p><i>facilities in accordance with Section 26(2) of the Act, and which is binding on the signatory parties over the period of the agreement.</i></p>	

Document Sub-Section	Submission Made By (Stakeholder Category ¹)	Comments Received	Recommendations Made	TATT's Decisions
4.1 4.2 "Access Charge" 4.3	TSTT	TSTT wishes to draw to the Authority's attention that access to facility is applicable to concessionaires of public telecommunications network and broadcasting service as stipulated by Section 26(1) of Act No. 4 of 2001.	TSTT recommends that the definition of access charge include broadcasting service. <i>"Access Charge" means any charge for access to a facility on a public telecommunications network and broadcasting service.</i>	TATT refers to the comment above regarding the definition of "facility". The definition will be changed to: <i>"Access Charge means any charge for access to a facility of a public telecommunications network or broadcasting service concessionaire."</i>
4.4 4.5 "Calling line identity (CLI)"	TSTT	TSTT wishes to draw to the Authority's attention that Part I Section 2 of Act No. 4 of 2001 clearly defines what " facility " is and is not. As such CLI is not a constituent of facility as it is applicable to network and not infrastructural components.	TSTT recommends that CLI be deleted from Access to Facilities Regulations as it is not a constituent of "facility" as defined by the Telecommunications Act.	TATT agrees and will delete CLI from the Regulations.
4.6 4.7 "Dominant concessionaire"	TSTT	It is TSTT's opinion that Section 26(1) clearly states that access to facilities is applicable to all concessionaries of telecommunications networks and broadcasting service. Therefore, the provision of dominance does not arise as all	TSTT recommends that the phrase Dominant concessionaire and its meaning be deleted from the Access to Facilities Regulations.	TATT intends to seek amendment of the Act to provide for additional obligations to be placed upon dominant providers, however, in the interim the concept of

Document Sub-Section	Submission Made By (Stakeholder Category¹)	Comments Received	Recommendations Made	TATT's Decisions
		concessionaires must provide access to facilities.		dominance will be removed from the Regulations.
4.8 4.9 “Essential facilities”	TSTT	The notion of essential facilities does not arise as access to facilities as defined in the Act as infrastructural facilities. Additionally, access must be provided by all concessionaires of a telecommunications network and broadcasting service [Section 26(1)].	TSTT recommends that the phrase “essential facility” and its meaning be from the Access to Facilities Regulations.	Agreed.
4.10 4.11 “Local Loop”	TSTT	The notion of access to local loop does not arise as facility as defined in the Act excludes “wires, lines, terrestrial and submarine cables, wave guides, optics or other equipment or objects...” TSTT considers local loop unbundling to be premature at this stage of market liberalisation and would refer the Authority to Appendix 2 of our previous response on the Interconnection Regulations – attached for ease of reference.	TSTT recommends that the phrase “Local loop” and its meaning be removed from the Access to Facilities Regulations.	The definition will be deleted. However, TATT does not agree with TSTT comments, and in particular will require unbundling of the local loop as and when it considers appropriate. Provisions required will be included in these Regulations.
Section 4				

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4(c)	TSTT	<p>TSTT is of the view that subsection (a) and (d) can be merged given that (d) is implicit in (a).</p> <p>TSTT is extremely concerned that Subsection (c) may infringe upon the rights of either party to include breach of contract conditionalities in a commercially negotiated agreement for access to facilities as stipulated under 26(2) of the Act. Further, where breaches may occur, this subsection can restrict the enforcement of same as specified in the contractual agreement.</p>	<p>TSTT recommends that Subsection (a) be rewritten such that:</p> <p><i>a) have an obligation to provide access to their facilities, inclusive of collocation as outlined in Part V and such access should not be unreasonably withheld;</i></p> <p><i>TSTT recommends that subsection (c) be redrafted as follows:</i></p> <p><i>“ neither withdraw nor impair access once already granted, unless for breach of contract or pursuant to the decision of the dispute resolution arbitrator or a court of law;”</i></p>	<p>TATT does not agree.</p> <p>TATT does not agree. Permission of termination in such circumstances can readily lead to abuse. Termination for breach of contract will be permitted only upon sanction by a dispute resolution process.</p>
Section 5				
5(1)	TSTT	Section 5(1) repeats the obligations that are set out under the same section of the Interconnection Regulations. Access and	TSTT recommends that (5)(1) be redrafted. Such a redraft can state that: <i>“Concessionaires are required to supply to</i>	TATT proposes to redraft this section to provide further clarity regarding the provision

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5(2)		<p>interconnection are different issues and have different requirements but the regulations seem to confuse the two issues. Why would a concessionaire requiring access to a mast, for example, require information on another concessionaire's network and services. TSTT is extremely concerned that Section (5)(1) extends access to facilities to network and service access. This is contradictory to Section 26 of the Act. Further, information on infrastructural access should pertain only to the relevant facilities to which access is sought.</p> <p>TSTT therefore is of the opinion that Section (5)(1) be redrafted to reflect the parameters for access as outlined in Section 26 of the Act.</p> <p>TSTT draws to the Authority attention that Section 26(2) of the Act states that access to facilities shall be commercially negotiated between concessionaries on a non-discriminatory equitable basis. In accordance with the Act, only in the event that both parties request it will the Authority assist in negotiating a settlement. TSTT is</p>	<p><i>access seekers upon request, such information about the relevant facilities to which access is sought."</i></p> <p>TSTT strongly recommends that access to facilities be commercially negotiated between concessionaires as stated in Section 26(2) of the Act. Therefore TSTT recommends that Section (5)(2) be deleted.</p>	<p>of information, however, as stated above, TATT does not agree with TSTT's interpretation of the word "facility" an therefore network information must be provided when required for the purposes of access.</p> <p>Subsection 5(2) is intended to facilitate access to information and does not impinge upon the parties' right to negotiate.</p> <p>As envisaged by the Act, the Authority will intervene to assist in the negotiations in</p>

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		of the view that parties be allowed to commercially negotiated access to facilities with the Authority's responsibility being confined to establishing broad parameters for negotiations. The alternative suggested in this subsection appears to be a heavy handed approach to regulations.		the event that <i>either</i> party requests it (section 26(2)), to regulate rates, terms and conditions (section 26(4)), or where a dispute arises (section 82).
	TSTT	TSTT is extremely concerned about the heavy handed approach to regulation as adopted by the Authority. This can impinge upon the ability of concessionaires to negotiate commercial arrangements that optimize market conditions. Further, TSTT is concerned that the Authority's ability to revoke exemptions without providing reasons can not only impinge upon the right of concessionaires to privacy but also negatively impact upon the Authority's credibility and transparency.	TSTT suggests that the Authority utilizes a 'light handed' approach to commercial negotiations between concessionaries as per access to facilities. In this vein, the Authority should establish broad parameters for negotiations. Finally, TSTT recommends that the Authority provide reasons where it makes a regulatory intervention. This would auger well for its credibility and transparency of its processes.	Noted, however, the Authority wishes to ensure that non-provision of information does not impede negotiations for access. This Regulation is intended to do so.
Section 6				
	TSTT	TSTT recognizes that in the Authority's Policy statement No. 15 as outlined in its Revised Draft Interconnection and Access Policy that infrastructure sharing is	TSTT suggests that Section 6 be redrafted to reflect Section 26(3) of the Telecommunications Act. As such TSTT suggest the following:	TATT proposes to redraft this section to ensure that it is consistent with the Act.

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		<p>mandatory. However, TSTT wishes to draw to the Authority's attention that Section 26(3) of the Act clearly stipulates the limiting conditions under which access to facilities can be denied. The Regulations, must mirror the Primary Legislation, to do otherwise renders the Regulations ultra vires.</p> <p>In addition, TSTT notes that policy statement No. 15 is affixed to subsection 14 (Start-up Interconnection Costs) of the Revised Draft Interconnection and Access Policy. TSTT wishes to remind the Authority that access to facilities, as defined by the Act is not applicable to Interconnection (Section 26(5)).</p>	<p><i>"Save and except where it is demonstrated that there is insufficient capacity in facilities, taking into account a concessionaire's reasonable anticipated requirements and its obligation pursuant to section 27 of the Act, or for reasons of safety, security, reliability or difficulty of a technical or engineering nature, infrastructure sharing arrangements are mandatory on all concessionaire for public telecommunications networks and broadcasting services.</i></p>	
Sections 7 & 8				
	TSTT	TSTT notes that Section 7 and 8 of these regulations seeks to disaggregate the network and services of the incumbent concessionaire. However, the Act clearly states what constitutes a "facility" and therefore the access requirements set out	TSTT strongly recommends that Part III be redrafted to reflect the definition of access to facilities as contained in the Act. As such Section 7 should read:	TATT will delete the concepts of dominance and essential facilities.

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		<p>under section 7&8 are in breach of the Act</p> <p>Access to facilities is confined to infrastructural component of the network and not network access. This is reinforced by section 26(5) of the Act which states "For purposes of this section, access to facilities does not include interconnection".</p> <p>Considering all of these stipulations, network access and the degree of unbundling as required under section 7 and 8 are not applicable under access to facilities and are ultra vires.</p> <p><i>Pertaining specifically to Section 7, Access to facilities is an obligation on all concessionaires (Section 26(1)). Hence, the issue of dominance and essential facilities do not apply. In addition, Section 18(5) of the Act requires the Authority, in the performance of its functions and exercise of its powers, to act in an objective and non-discriminatory manner.</i></p>	<p><i>4.11.1.1 Obligation on Concessionaires</i></p> <p>"Subject to Section 26(3) of the Act, a concessionaire is obliged, upon request, to provide access to facilities on a non-discriminatory and equitable basis". The rest of section 7 should be deleted, as should section 8.</p>	
Section 7				

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	Illuminat (Trinidad & Tobago) Limited	Allows access on request. This provision and section 8 must be consistent.	Amend section 7 to state that the right is exercisable notwithstanding the provision of section 8	See comments above. TATT intends to delete the concepts of dominance and essential facilities.
Section 8				
	Antilles Crossing	Antilles Crossing believes that the scope of paragraph 8 should be widened to: (a) include the necessity to provide trunk connection facilities on a wireless basis and (b) ensure that all essential facilities are provided in an appropriate capacity increment, that is to say T-1 or DS-3 links as opposed to oversized OC-3 (STM-1) links.		TATT, in accordance with the Act will require access to all facilities, as that term is defined in the Act. The issues raised are related to interconnection, not access. The Indicative RIO will provide capacity guidelines.
	Illuminat (Trinidad & Tobago) Limited	Allows TATT to specify what essential facilities must be accessible. This could be construed as a precondition to the rights under section 7	TATT can immediately specify which of the listed facilities are immediately accessible	The concept of essential facilities will be deleted. TATT, in accordance with the Act will require access to all facilities, as that term is defined in the Act.
Section 10				

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	TSTT	<p>TSTT agrees with section 10(1) of these regulations. However, the company suggests that it be included in the revised version of Section 7 as suggested by TSTT above.</p> <p>TSTT reminds the Authority that Access to facilities is not applicable to network access. Hence, the issue of replicating quality levels of access resource does not apply. Further, TSTT draws the Authority's attention to Section 26(2) and (3) of the Act which guarantees non-discrimination and the conditions under which a concessionaire may deny access to facilities respectively.</p>	<p>TSTT recommends that Section 10(1) be included in the revised version of Section 7 as suggested by TSTT above.</p> <p>TSTT suggest that 10(2) be redrafted to reflect the substantive provision of the Act as stated in Section 26(3). Such a redraft may be: "Where a concessionaire denies access to facilities in accordance with Section 26(3) of the Act, it shall provide written justification to the Authority."</p>	<p>Not agreed.</p> <p>Noted. The issue of denial of access will be more comprehensively addressed in the Regulations. The amendments should address TSTT's concerns but will also add a clear process for denial and appeal.</p>
Section 11				
	TSTT	<p>This section has been replicated from the Interconnection Regulations but is not relevant to Access Regulations.</p> <p>Beyond this discourse, TSTT reminds the Authority that Section 26 of the Act does not require <i>network</i> access and is only applicable to <i>access to facilities</i>, where facilities is clearly defined as components of</p>	<p>TSTT recommends that Section 11 be deleted from these regulations as it ultra vires the Act.</p>	<p>TATT does not agree with the interpretation of "facility" suggested by TSTT.</p>

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		infrastructure.		
Section 12				
	TSTT	<p>This section should be rewritten to allow for commercial negotiation. Most of the areas identified in subsection (b) (c) (d) (e) and (f) are negotiable and confined to the terms and conditions between concessionaires.</p> <p>Further, the subsection should be restricted to information as requested for specific or relevant sites as per collocation request.</p>	<p>TSTT recommends that Section 12 be written to allow concessionaires to negotiate relevant terms and conditions. Thus, Section 12 can be stated as follows:</p> <p>“Access providers must specify upon request from an access seeker, the terms and conditions of collocation services. Such terms and conditions are to be provided for the relevant sites as per request.”</p>	<p>TATT disagrees. The Authority intends to ensure the provision of adequate information between concessionaires to facilitate negotiation of access and this Regulation is intended to assist in doing so.</p>
Section 13				
13(1)	TSTT	<p>Once again, TSTT would highlight the definition of “facility” under the Act and that Section 26 of the Act speaks directly to physical access to infrastructural facilities rather than physical collocation. Nothing in the Act requires a concessionaire to provide</p>	<p>TSTT recommends that Subsection 13(1) be deleted from the Act.</p>	<p>TATT does not agree with the interpretation of the Act's definition of “facility” suggested by TSTT.</p>

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13(2)		<p>virtual collocation and therefore this section is ultra vires the Act.</p> <p>TSTT reminds the Authority that Section 26(3) of the Act specifies the conditions under which Access to facilities may be denied. Such denial of access is to be forwarded to the Authority for verification.</p>	<p>Subsection (2) should be rewritten to reflect the conditions of denial as stipulated in the Act. Thus this subsection can be redrafted as: <i>"Where collocation has been denied in accordance with Section 26(3) of the Act, the reasons for denial must be submitted to the Authority in writing within seven (7) days.</i></p>	<p>Noted. The issue of denial of access will be more comprehensively addressed through redrafts of this section.</p>
13(3)		<p>TSTT draws to the Authority's attention that Section 50 of the Telecommunications Act 2001 (Part Vi: Testing and Inspection), identifies the conditions under which the Authority can enter and search a concessionaire's premises. Section 50 does not include the power for the Authority to enter premises to verify space limitation.</p>	<p>TSTT recommends that subsection (3) of these regulations be deleted.</p>	<p>Noted. The Authority has general powers to investigate complaints and to do acts incidental or conducive to the performance of its functions. Such inspections are a part of those functions.</p>
13(4)		<p>TSTT draws to the Authority's attention that the provision of this subsection (4) may does not take account of Sections 18(4)(b) and 39(7) of the Act which permits affected</p>	<p>TSTT recommends that a process for hearing a concessionaire's denial of collocation be established by the Authority in accordance with the Act.</p>	<p>Noted. The issue of denial of access is more comprehensively addressed in the redraft.</p>

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		<p>entities to make appropriate submissions to the Authority and to call for a review of the Authority's decision.</p> <p>TSTT is of the opinion that the principle of cost causality be applicable in the area of collocation. Such cost should be recovered from the access seeker.</p> <p>In addition, TSTT enquires of the Authority as to the definition of "efficient cost" which the Authority in its Annex I Definition of Terms at page 55 of the Revised Draft Interconnection and Access Policy fails to define.</p>	<p>TSTT recommends that under the principle of cost causality, costs associated with collocation be recovered from access seekers.</p> <p>TSTT also recommends that efficient cost be removed from these regulations as no definition is provided in the Annex I: Definition of Terms.</p>	<p>Agreed.</p> <p>Noted. The concept has been removed.</p>
Section 14				
	Digicel Trinidad & Tobago Ltd.	60 days is excessive if a request is linked to a request for interconnection in respect of which the Authority has provided an indicative Reference Interconnection Offer.	The time period should be 30 days if the access is required for interconnection in respect of a service for which the Authority has provided an indicative offer.	Indicative Offer is not relevant to Access to Facilities. TATT proposes to revise the period to 42 days.
	TSTT	TSTT is concerned that the timeframe for negotiating a commercial agreement between concessionaires is extremely short and in any event, a dispute should not	TSTT recommends that a ninety (90) days period is more applicable for negotiating a commercial arrangement.	TATT proposes to revise the period to 42 days.

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		automatically arise. A dispute should only be declared feel that negotiations have reached an impasse, not at an artificially imposed date.		
Section 15				
	TSTT	TSTT draws to the Authority's attention that the constituencies mentioned in this Section (with the exception of prices) are not applicable to access to facilities but network access.	TSTT recommends that this Section be deleted.	TATT disagrees with TSTT's interpretation of the definition of "facility".
Section 16 - 18				
	TSTT	<p>TSTT is extremely concerned that the principle of dominance is applied to Subsection (16), (17) & (18) given that Section 26 of the Act stipulates that all concessionaires of public telecommunications networks and broadcasting service shall provide access to facilities on a non-discriminatory and equitable basis.</p> <p>Further, these section conflicts with Subsection 26(2) of the Act which stipulates that access to facilities are to be</p>		<p>Noted. The concept of dominance has been removed. The requirements for Authority approval remains but now applies to all access agreements.</p> <p>The Authority will provide a</p>

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		<p>commercially negotiated between concessionaires.</p> <p>Additionally, the time frame of 14 days for dominant concessionaire and 28 days for other concessionaire is discriminatory and conflicts also with section 25(f) of the Act.</p> <p>Finally, the stipulation contained under subsection (16)(17) &(18) conflicts with the provisions outlined in these regulations pertaining to non-discrimination (Part IV) and section 18(5) of the Act.</p>		<p>procedure for objecting to and requiring amendments to concluded agreements in accordance with section 26(4) of the Act.</p> <p>Noted, the amendment above will apply.</p> <p>Noted. See above.</p>
Section 20				
20(1)	TSTT	<p>The issue of dominance does not arise in this subsection. Rather Section 26(2) of the Act stipulates that access to facilities is to be commercially negotiated between concessionaires on a non-discriminatory and equitable basis.</p> <p>Additionally, the reference to efficient cost is somewhat ambiguous as the Revised Draft Interconnection and Access Policy</p>	<p>TSTT recommends that Section 20 (1) be redrafted to reflect the conditions outlined in Section 26(2) and (4) of the Act. TSTT suggest the following redraft:</p> <p><i>(1) Access to facilities shall be commercially negotiated between concessionaires, and where concessionaires fail to reach a negotiated outcome over rates, the Authority my</i></p>	<p>TATT agrees regarding dominance. TATT will adopt such just and reasonable basis for charging as it may consider appropriate.</p>

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		fails to define what constitutes efficient costs. Instead, it is more appropriate for the regulations to establish a costing methodology.	<i>exercise its powers as contained under subsection 26(4) to set charges that are cost based.</i>	
20(2)	TSTT	Given the existence of cost models already available, and the benefit of using cost models over other less-exact approaches such as benchmarking, the Authority should ensure the use of cost models in determining charges for access to facilities.	TSTT recommends that Section 20(2) be deleted.	TATT disagrees; TATT will determine appropriate approaches based on the test " <i>just and reasonable</i> ".
Section 21				
21(1)	TSTT	TSTT reminds the Authority that dominance does not apply, as all concessionaires shall provide access to facilities. Further, as previously stated, concessionaires are required to commercially negotiate access to facilities agreements. The rates so determined should be market based and not regulated. Finally, the Authority should only prescribe procedures for rates as a last resort where all attempts to negotiate commercially fails (market failure).	TSTT recommends that Section 21 be applicable to commercial negotiations as stipulated under Section 26 of the Act. Further, where the Authority is of the opinion that appropriate procedures should be established, such procedures should transparent and non-discriminatory and applicable to all concessionaires.	The issue of dominance will be removed.

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21(2)	TSTT	TSTT recommends that rather than submit analysis pertaining to commercial negotiation regarding rates, the Authority should require concessionaires to submit copies of commercial agreements for access to facilities to the Authority within twenty-eight (28) as outlined in the Act.	TSTT recommends that copies of all commercially negotiated agreements for access to facilities be submitted to the Authority within the stipulated twenty-eight (28) days requirement of the Act.	Noted. TATT will <i>in addition</i> require the submission of negotiated agreements.
Section 22 & 23				
	TSTT	<p>TSTT welcomes the Authority's position on providing guidance prior to concessionaires submitting a dispute to the Authority. However, this does conflict somewhat with regulation 14 which states that a dispute is automatic after 60 days and parties are not given the opportunity to refer a dispute. In any event, TSTT reminds that Authority that under Section 82 of the Act the Authority cannot be a party to any dispute arising from concessionaires' failure to reach a commercially negotiated agreement as per access to facilities.</p> <p>TSTT assumes that the Enforcement and Compliance Regulations which have yet to be published will set out the arbitration</p>	<p>TSTT suggest that if the Authority is to offer guidance, that the Authority establish non-discriminatory and transparent procedures.</p> <p>TSTT also suggest that dispute resolution procedures be implemented as the Authority cannot be a party to any dispute for access to facilities as stipulated under Section 82 of the Act.</p>	<p>TATT agrees.</p> <p>TATT disagrees with this interpretation of Section 82.</p>

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		process to be conducted by a party independent of the Authority.		
Section 24				
	TSTT	TSTT welcomes the Authority's articulation on the establishment of Enforcement and Compliance Regulations and we expect that those regulations will provide the arbitration process referred to in section 82 of the Act.	TSTT recommends that procedures for arbitration be established for addressing disputes in accordance with section 82 of the Act.	TATT agrees.