

## Decisions on Recommendations on the Standards and Guidelines for Access to Facilities v1

The following summarizes the comments and recommendations received from stakeholders on the first draft of this document (dated June 2014), and the decisions made by TATT as incorporated in this revised document (August 2014)

Document Sub-Section	Submission Made By: Stakeholder Category <sup>1</sup>	Comments Received	Recommendations Made	TATT's Decisions
General – Sections 1-8 of the Policy Document	TSTT	<p>The Telecommunications Act 2001 provides at Section 26(2) that:</p> <p>“Access to facilities shall be negotiated between concessionaires on a non-discriminatory and equitable basis and, at the request of either party, the Authority may assist in negotiating a settlement between such parties.”</p> <p>This consultation goes beyond the prescriptive measures of the Telecommunications Act and the Access to Facilities Regulations to prescribe additional content, timelines for the treatment of access requests and the regulation of access requests.</p> <p>Although the intention is a noble one, we believe the legal authority for proposed initiatives is lacking in key areas and, accordingly, there is no legal obligation on the access provider and the seeker beyond what is contained in the Act.</p>	The document should be focused on bringing clarity and providing guidelines where gaps exist in the current legislative framework regarding access to facilities as opposed to an ineffective attempt to impose detail in excess of the legal requirement.	<p>The Authority notes TSTT's concerns and advises that it will address any gaps which may exist in the current legislative framework through a revision of the Access to Facilities Regulations.</p> <p>It is worth noting that this document is intended to provide guidance on the development of Reference Access Offers for access to facilities which is a tool used to facilitate access negotiations and not necessarily provide guidelines for facilities sharing.</p>

<sup>1</sup> 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

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		<p>TSTT notes further that many of the items discussed in the preamble to the Draft Standards and Guidelines at Section 8.0 do not appear in the final draft leading one to believe that the document is incomplete by reason of these omissions.</p> <p>While the guidelines appear to be written with the overall objective of ensuring that an access seeker is provided timely access, they provide little guidance with respect to existing gaps in the legislative framework (e.g. reasonable grounds for denial of access to an access seeker).</p> <p>It is our respectful view that these guidelines will be of little use to the access seeker and access provider until these gaps are comprehensively addressed.</p>		<p>Section 8 has been amended providing a comprehensive list of items from the preamble.</p> <p>The Authority wishes to reiterate that any gap which may exist in the current legislative framework will be addressed through a revision of the Access to Facilities Regulations. Further, TSTT is directed to PART VI of the Access to Facilities Regulations which provides guidance on reasonable grounds for denial.</p>
<b>Section 2</b>				
Introduction	CCTL	<p>CCTL supports any effort to promote the orderly robust and sustained development of competition in the market. We also welcome the opportunity to provide input on policy and regulatory issues through the process of consultations.</p> <p>We reserve the right to provide additional comments in further phases of the process.</p>		The Authority wishes to advise that any additional comments provided by CCTL during the consultation process will be considered.
Consultation Process	CCTL	This is the first version of the Draft Standards and Guidelines for the Development of Reference Access	We request that TATT clearly state whether it intends to do another round of	This document is a new one and as such, will undergo at least two (2) rounds of

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		<p>Offers. Consistent with the Authority's statement to this effect, we expect that the process used for finalising this document will follow the established Procedures for Consultation in the Telecommunications Sector of Trinidad and Tobago.</p> <p>The current procedures for consultation is outlined in "Procedures for Consultation in the Telecommunications and Sectors of Trinidad and Tobago, of January 22, 2010. In addressing The Consultation Period (Item 5.1.1, page 14), it states "... <i>The Authority shall as far as is possible have at least two rounds or phases of any given process.</i>" Allowance is made for a single round of consultation for draft regulations to be submitted to the Minister for laying in Parliament given the thoroughness of the process to enact legislation. consultation.</p> <p>This document does not fall into the latter category. It is the first draft of proposed standards and guidelines for the development of reference access offers.</p> <p>It appears however that TATT intends to finalize the Draft Standards and Guidelines for the Development of Reference Access Offers after only one round of consultation. CCTL is requesting that TATT clarifies its intention.</p> <p>We believe that having a minimum of two rounds of consultations allows for more accountability, and transparency in coming to final decisions. It also</p>	<p>consultation on this document.</p> <p>On a procedural point we recommend that TATT use the established process for such consultations, which calls for two a minimum of two rounds of consultations.</p>	<p>consultation in accordance with the Authority's Procedures for Consultation in the Telecommunications and Broadcasting Sectors of Trinidad and Tobago.</p>

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		allows for wider airing of views from various stakeholders, and should facilitate more reasoned and informed outcomes.		
2.3 Regulatory Environment	TSTT	<p>At Section 2.3 the Authority states an intention to establish a framework through which prices for access to facilities and access to essential facilities are regulated pursuant to Section 26(1) &amp; (4), 29(2), (5) and (6) of the Act. However, examination of the sub-clauses within the context of the surrounding clauses reveals that none of these sections give support to the Authority's objective.</p> <p>Section 29 of the Telecommunications Act refers to the prices of telecommunications services. The term "telecommunications service" is defined in the Act as follows: "a service using telecommunications whereby one user can communicate with any other user in real time, regardless of the technology used to provide such a service and includes a public telecommunications service, a private telecommunications service, a closed user group service and a radio communication service.</p> <p>It is clear that the definition does not countenance access to facilities and, accordingly, section 29(2), 29(5) and 29(6) do not give authority to the telecommunications regulator to regulate the prices for access to facilities and access to essential facilities.</p> <p>In fact, section 26(2) stipulates that access to facilities shall be <b>negotiated between Concessionaires</b> on a</p>	The rationale for the proposed amendments does not exist and the document should be amended accordingly.	<p>The document has been amended accordingly.</p> <p>TSTT should note that Section 29(2)(c) is not constrained to the application to telecommunications services. It applies in any instance, under the jurisdiction of the Act, where "anti-competitive pricing or unfair competition" is detected. Accordingly, where parties are not providing access to facilities, or use pricing</p>

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		<p>non-discriminatory and equitable basis and provides that parties to the agreement may request the assistance of the Authority. Further the stipulations of Regulation 18(2) are clear:</p> <p><b>“(2) Where the relevant data for the establishment of the costing methodologies, models or formulae are unavailable</b> within a reasonable time, the concessionaire may set access rates with reference to such costing benchmarks, as determined by the Authority, that comport with internationally accepted standards for such benchmarks.”</p> <p>Section 26(4) is also firm in that the Authority may regulate prices post negotiation if a complaint is received.</p> <p>Consequently, none of the quoted clauses appear to convey authority for the establishment of an ex-ante regime through which prices for access to facilities and access to essential facilities can be regulated.</p>		<p>structures which are deemed “anti-competitive” to access these facilities, Section 29(2)(c) may give the Authority the necessary powers to intervene in accordance with Section 26(4).</p> <p>TSTT's is interpretation not accurate. S.26(4) of the Act does not constrain the Authority's discretion in regulating rates to “post negotiation”. Further, the subsection does not constrain the Authority's action to only after a complaint is received.</p>
<b>Section 3</b>				
Main Elements of the RAO	Digicel (Trinidad & Tobago) Limited	The Authority's decision to mandate wide ranging infrastructure sharing on towers, poles, ducts and manholes and space (buildings and land) has the potential of undermining investment and innovation in telecommunications infrastructure and hence weakening competition.	Consideration should only be given to infrastructure access only if there is no other practical way to encourage competition and should not be granted in the case of brand new network build. Where consideration is being given to granting access, the Authority should bear	The Authority refers Digicel to Concession Conditions A46 and A47 made pursuant to Section 26 of the Telecommunications Act Ch47:31 and the Access to Facilities Regulations which mandates the sharing of facilities.

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			in mind the impact that will have on operators' incentives to invest, and the risk taken in making the original investment to provide competitive network advantages over other players in the market.	
<b>Section 4</b>				
Guidelines for Development of Legal Framework - Terms and Conditions	Digicel (Trinidad & Tobago) Limited	<p>Infrastructure sharing should be a two way street; where any obligations are imposed on one party to provide access, there must be obligations on the other party to carry out its part of the process with similar sanctions for noncompliance. Otherwise, access requests can be made frivolously, or used strategically to tie up the resources of a competitor.</p> <p>We note in particular, for example, the requirement to commence site visits within 14 days and to complete them within 28. If there are many sites involved 28 days may not be practical.</p> <p>Reference is made to sub-section (c) which states: "Provision should clearly articulate the approach for the access seeker to also access main and standby</p>	<p>Infrastructure access seekers should be required to pay an advanced deposit related to the operational and capital costs of the work needed to enable access. We suggest that figure should be 50% of the cost - this is normal in commercial negotiations.</p> <p>Site visits may commence within 14 days but no more than two site visits a day should be mandated.</p> <p>Digicel recommends that main and standby power needs to be defined and be subject to individual assessments. The load</p>	<p>Negotiation for access to facilities is primarily the responsibility of the concessionaires as set out in Section 26 (2) of the Act.</p> <p>Noted, however the Authority believes that operators should act in due haste to facilitate site visits and will not countenance the delay in site visits causing undue delay in completion of negotiations. This requirement has been revised to state that, as far as is reasonably practicable, the first site visit shall be conducted within 14 days but no longer than 28 days after the request. Further the overall timeframe of the completion of subsequent access requests has been adjusted to 42 days.</p> <p>The Authority agrees. Negotiation for access to facilities is primarily the responsibility of the concessionaires. As</p>

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		Power & HVAC.”	dimensioning and any associated expansion requirements to any power plant would have to be considered and the cost of the same would need to be borne by the operator requesting main and standby power.	such, the items outlined by Digicel in its recommendations should be clearly articulated in the Legal Framework as stated in Section 4 (c) of the document.
<p>4.0 Guidelines for the Development of the Legal Framework</p> <p>The requirement to notify the Authority in the event of breach, suspension or termination of agreement</p>	TSTT	There is no requirement at this time to notify the Authority in the event of breach, suspension or termination of agreement in either the Telecommunications Act or the Access to Facilities Regulations. Notification is not obligatory and this fact should be highlighted in the document.	The document should make clear that these standards are non-obligatory.	Noted. The document has been amended accordingly.
<p>4.0 Guidelines for the Development of the Legal Framework</p> <p>The requirement for recognition of the jurisdiction of the Authority and its Dispute Resolution process.</p>	TSTT	<p>Section 82 of the Telecommunications Act provides that the Authority shall establish a dispute resolution process to be utilized where a negotiated settlement, as required under section 26, cannot be achieved.</p> <p>It is clear that the laws of Trinidad and Tobago provide that where a negotiated settlement cannot be achieved the dispute resolution mechanism provided by the Authority must be utilized. Why then the need for formal recognition of the jurisdiction of the Authority and its dispute resolution process be included in agreements? No other regulator is recognized by the Telecommunications Act.</p>	The requirement for the inclusion of provisions that give recognition to the Authority's jurisdiction and that of its dispute resolution measures should be struck from the document.	Noted. The recognition of the Authority's Dispute Resolution process has been removed from the document.

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		<p>The term “Authority” in the Telecommunications Act is defined to refer to the Telecommunications Authority of Trinidad and Tobago. The stipulations of Section 82 are clear – if parties after exhausting all available options to arrive at an agreement (inclusive of alternative settlement measures) cannot arrive at an agreement, the final resort is the Authority’s dispute resolution procedures.</p>		
<p><b>4.0 Guidelines for the Development of the Legal Framework</b></p> <p>Provisions to ensure that the first site visit is conducted within fourteen days of access request.</p> <p>Provisions ensuring that where more than one site visit is required, these are conducted within 28 days.</p>	TSTT	<p>Regulation 19(1) states as follows:</p> <p><i>19. (1) Every access agreement shall stipulate a period not exceeding twenty-eight days within which access shall be effected except with the prior approval of the Authority in writing.</i></p> <p><i>(2) Notwithstanding subregulation (1), the Authority may upon written application of a concessionaire extend the period referred to in subregulation (1).</i></p> <p>The requirement to conduct the first site visit within fourteen days of access request appears to be at variance with the time for response provided by the regulations and holds the access provider to a higher standard than that envisaged in the regulations. Its enforceability is therefore brought into question.</p> <p>It would have been more practical to require that a schedule of times and dates at which access would be granted is made available within 14 days (to coincide</p>	<p>Remove the requirement to conduct the first visit within 14 days and replace it with a requirement on the part of the access provider to provide a schedule by which access will be granted. The requirement to provide access will conform with the requirements of regulations 19(1) and 19(2).</p>	<p>In accordance with Regulation 11(1) a concessionaire shall endeavor to conclude an access agreement within forty-two (42) days of receipt of an access request. Within these forty-two days:</p> <ul style="list-style-type: none"> <li>• The first site visit to be conducted within fourteen (14) days of the access request;</li> <li>• Additional site visits, where required, to be conducted within twenty-eight (28) days of the access request.</li> </ul> <p>Following conclusion of the agreement, access to facilities shall be effected within twenty eight (28) days, as set out in Regulation 19 (1).</p>



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		with the outer limit specified for the denial access) of the access request with the requirement that access should be effected within 28 days as per the regulations.		
<b>Section 5</b>				
<p>Guidelines on Minimum Requirements for Service Descriptions - Types of Facility Sharing Services –</p> <p>1. Physical co-location service</p>	<p>Digicel (Trinidad &amp; Tobago) Limited</p>	<p>Digicel considers that in-span interconnection (interconnection between switch sites using a fibre link) rather than physical or virtual collocation is the most practical way forward. It is generally undesirable and a security concern for any operator if another operator has physical or contractual rights with respect to equipment or circuits within the first operator's network. If the Authority is required to police physical and virtual co-location this could be a very time consuming process.</p> <p>With respect to tower sharing, Digicel believes that "one for one" sharing is the best way forward. It must be borne in mind that competitors compete on coverage but will be less able to do so if they are forced to enable co-location on any number of towers. We also underline that it would be inappropriate to require sharing on towers where they form part of a very critical SDH backbone transmission ring. The space on such towers is in high demand by the original operator and failure of them has the potential to cause major outages on an operator's network.</p>	<p>More clarity should be provided for physical co-location service.</p> <p>As this is a "standards and guidelines"</p>	<p>Terms and conditions in respect of rights to accessing physical facilities shall be agreed upon between parties.</p> <p>The Authority does not support “one for one” sharing. Concessionaires are required to provide other concessionaires with access to its facilities in accordance with Section 26 (1) of the Act. The “one for one” sharing would necessarily exclude new entrants, without an existing stock of towers, from seeking access. This is not acceptable in the context of the objects of the Act.</p> <p>Pursuant to Section 26 of the Act, all</p>

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			document, the Authority should provide some guidance as to when exactly towers can be shared. Digicel recommends that sharing on towers that form part of the critical SDH backbone transmission ring should not be allowed.	facilities are eligible for sharing. However, if an access provider deems a tower or facility ineligible for sharing, for purposes outlined in Regulation 23 (1) of the Access to Facilities Regulations, this should be proven to the Authority in accordance with Regulations 3 and 4 of the Access to Facilities Regulations.
2. Duct and Manhole Access Service	Digicel (Trinidad & Tobago) Limited	Digicel believes that in order to avoid costs, duct sharing should be available.	Once again, Digicel recommends that the Authority give some detailed guidance for duct sharing as this is a "guidance document".	Guidance on the requirements for facilitation of duct sharing, as it relates to the development of a Reference Access Offer, has been provided for in this document as ducts are recognized by the Authority as a facility.
3. Additional Services	Digicel (Trinidad & Tobago) Limited	Reference is made to the Authority's statement: "In addition to seeking access to physical infrastructure (passive) for site sharing, access seekers may also require access to the support or supplementary services of the access provider."  The Authority should ensure that there is no doubt as to how additional services should be provided by the access provider.	Digicel recommends that this section should stipulate, for the avoidance of doubt, that the access provider must be required to provide interconnection (among other things) to its directory assistance services and databases, freephone services and emergency services at rates to be determined by the Authority.	This document relates to the sharing of passive infrastructure eg. towers, poles ducts etc. and not interconnection.  These matters are addressed in the Authority's Standards and Guidelines for Interconnection.
<b>Section 7</b>				
7.2 Access to facilities charges	Digicel (Trinidad & Tobago) Limited	Reference is made to the Authority's statement: "Additionally, the access provider shall set rates in a non- discriminatory manner and the rates should not be anti-competitive in nature."	The Authority needs to include more guidance in this very important area to avoid uncertainty. Facilities charges need to be clearly defined.	Section 8.4 of the document provides guidance on elements where charges for <b>access to facilities</b> are applicable.

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		<p>If the costs are not to be shared equally then it is necessary to set out what exactly should be deemed to be interconnection equipment and in what manner the equipment (including ongoing spares required) should be paid for - upfront or through per minute interconnection charges. Even if each party has to pay for the interconnection equipment within their networks, the issue of how to establish the fibre links between the respective switches and who pays for that element has to be addressed.</p> <p>In an environment where central office codes in each category (mobile, fixed, international only, etc.) are to be limited to the approximate number of operators that the Authority believes has a good chance of being viable on a long term basis then Digicel believes that operators should meet their own costs for access. This is because an operator is not exposed to a requirement to meet an endless number of requests for access. In Digicel's view, access equipment includes the multiplexer and the optical cards fitted into the multiplexer and not equipment further in to an operator's network. In terms of the fibre links between the switches, it is Digicel's view that in a limited licence environment the costs should be shared as both parties benefit from the fibre connecting the networks. The only exception in the latter case would be where the new entrant placed its switch in a location which drove up significantly the reasonable costs e.g. if the switch was built in a location where there was no nearby fibre ducting. The regulator should also</p>	<p>Digicel recommends that operators should meet their own costs for access.</p>	<p>These charges shall be set in accordance with Regulation 18 of the Access to Facilities Regulations.</p>

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		<p>stipulate how many points of access and to which networks the above conditions would apply.</p> <p>Cost-based pricing is not appropriate where infrastructure is brand new as that would significantly discourage investment.</p> <p>Further, it is noted that under the "Essential Facilities" part in this Section, that the Authority is referencing Regulation 20(1) of the Draft Pricing Regulations relating to the Authority's imposition of cost-based pricing. However, as the Authority is aware, a joint letter dated 22nd November, 2013 was sent to it by the three major concessionaires, namely Digicel (Trinidad &amp; Tobago) Limited, Telecommunications Services of Trinidad and Tobago Limited and Columbus Communications Trinidad Limited, pointing out that the purported "third consultation" of this document was fundamentally flawed due to procedural irregularities and requesting that this said document be withdrawn from consultation.</p> <p>It is therefore now quite alarming to see that despite the grave concerns raised by these three concessionaires, the Authority has gone ahead and</p>	<p>Cost-based pricing should only be employed where the initial capital cost has been written off.</p> <p>Digicel asks that the Authority remove all references to this third version of the Draft Pricing Regulations as such a document should not be referenced, or even used to as a guide, until all concerns raised by key stakeholders regarding same have been adequately addressed.</p>	<p>Digicel's recommendation is noted.</p> <p>The cost-based methodology for determining prices would take into account a reasonable rate of return to allow for a return on capital investments. This would mitigate against any deterrent to investment.</p> <p>References to Regulation 20 (1) of the Draft Pricing Regulations have been removed and replaced with references to Regulation 29 of the Draft Pricing Regulations (2008).</p>

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		referenced this version of the Draft Pricing Regulations in this document, blatantly ignoring the objections raised.		
<b>Section 8</b>				
8.2 Minimum Requirements for Service Description	Digicel (Trinidad & Tobago) Limited	If there are to be penalties for delays in provision, there should be penalties where the access seeker causes delay, or has made frivolous requests, or does not fully implement when access has been provided. This is because the access provider may incur significant costs and resource issues in enabling access.	To create a level playing field, and ensure that requests for access are bona fide, any penalties must apply both ways to access seekers as well as access providers.	<p>Noted. Where the seeker is the source of the delay, the access provider would have to make such a case to the Authority such that any decision with respect to enforcement is balanced and informed by the relevant facts.</p> <p>The Authority is of the view that any dispute regarding the legitimacy of an access request can be adequately addressed by the Authority through its dispute resolution process.</p>
<b>8.0 – Overview of the Standards and Guidelines – The Need for Guidance with Respect to Gaps in the Current Legislative Framework Governing Access to Facilities</b>	TSTT	<p>While <b>these guidelines introduce an additional level of detail in the information to be provided to a prospective access seeker</b>, they provide little guidance to address existing gaps in the current legislative framework.</p> <p>One such issue lies in establishing and verifying the reasonableness of an access provider's anticipated requirements as a ground for denial of access (Section 26(1) of the Telecommunications Act). Other issues lie in the right of the negotiating parties to establish procedures within access agreements to facilitate the resolution of issues arising out of concluded</p>	The document needs to address the outstanding issues of concern in the existing framework even before introducing further layers of obligation on both the access seeker and the access provider.	<p>The list in the guidelines for the development of the legal framework is not an exhaustive one. However, it would be prudent for the parties to the agreement to include terms and conditions which would address liability and indemnification.</p> <p>Further, any such commercial arrangement should also be guided by the OSH Act.</p> <p>The document however, has been amended to provide additional guidelines for the development of Reference Access Offers.</p>

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		<p>agreements before they escalate to disputes, responsibility for health and safety where an access seeker is provided separately secured accommodation within an access provider's premises, etc.</p> <p>TSTT suggests that these guidelines would be incomplete and of little effect until these issues are comprehensively addressed.</p>		