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A Consultative Document

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Access to Facilities Regulations

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1 Introduction

The Government of the Republic of Trinidad and Tobago (GoRTT) has, over the past few years, launched a series of initiatives which collectively seek to further develop and transform the national economy leading to “the development of an Information Society and the attainment of developed country status by Trinidad and Tobago by the year 2020”.

One of the major initiatives undertaken was the development of a National Information and Communications Technology (NICT) Plan in which several programs aimed at the development of the Information and Communications Technology (ICT) sector have been launched.

A key enabler of the NICT plan was the de-monopolization and liberalization of the telecommunications sector and the opening of the telecommunications market to competition in Trinidad and Tobago.

Another factor which contributed to the liberalization of the telecommunications sector was the fact that, within the General Agreement in Trade in Services (GATS) under the World Trade Organization, GoRTT had given the commitment to the opening of services in the telecommunications sector to competition by 2009.

In order to facilitate the objectives of the NICT Plan and the commitment to the WTO, it was necessary to establish the legal and regulatory framework by means of a Telecommunications Act which was passed in 2001. This led to the establishment of the Telecommunications Authority of Trinidad and Tobago, hereinafter referred to as “the Authority” or “TATT”, on 1st July 2004.

Another factor which contributed to the liberalization of the telecommunications sector was the fact that, within the General Agreement in Trade in Services (GATS) under the

World Trade Organization, GoRTT had given the commitment to the opening of services in the telecommunications sector to competition by 2009.

One of the first imperatives of the Authority was the development of the overall regulatory framework including the various telecommunications' policies required in order to establish the relevant regulations under the Telecommunications Act.

One such policy is the Interconnection and Access Policy which is essential in establishing the framework for the interconnection of telecommunications networks and services, and the sharing of facilities between operators of telecommunications networks and providers of telecommunications and broadcasting services.

1.1 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.”*

1.2 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
- ensure fair, non-discriminatory access among concessionaires to facilitate the orderly development of telecommunications in the Republic of Trinidad and Tobago
- support the telecommunications policy of the Government of the Republic of Trinidad and Tobago
- honour the country’s commitment to the World Trade Organization in respect of telecommunications services
- ensure that treaty obligations by the Government of the Republic of Trinidad and Tobago in respect of telecommunications are respected.

1.3 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 legal@tatt.org.tt.

1.4 The Consultation Process

The Authority will seek the views and opinions of the general public and other stakeholders regarding the proposals made in this document, in accordance with the Authority's *Procedures for Consultations in the Telecommunications Sector of Trinidad and Tobago*.

This draft policy will be made available for public comments for a period to be prescribed by the Authority.

Following consultation and amendments (where appropriate) the Access to Facilities Regulations will be submitted to the Minister for approval, and promulgation by negative resolution of Parliament in accordance with section 78 of the Act.

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 Policy
- Interconnection Regulations

- Quality of Service Policy
- Consumer Rights and Obligations
- Concession and Licensing Fee Regulations
- Spectrum Regulations
- National Frequency Allocation Table

2 Draft Access to Facilities Regulations

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

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| Citation | 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. In particular, these Regulations seek to encourage access to telecommunications facilities which cannot be economically replicated. |
| Interpretation | 3. In these Regulations:

“Access agreement” means a document detailing arrangements as negotiated and agreed between parties for an access seeker to obtain access to facilities within an access provider's network in accordance with section 26(2) of the Act, and which is binding on the signatory parties over the period of the agreement.

“Access charge” means any charge for access to a facility on a public telecommunications network.

“Access provider” means the concessionaire which is providing access to its facilities to an access seeker.

“Access seeker” means the concessionaire which is seeking access to the facilities of another concessionaire. |

“Calling line identity (CLI)” means the information generated by a telecommunications network which identifies the number of the calling party.

“Collocation” means provision of space at the premises of an access provider for purposes of an access seeker to install its network equipment.

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

“Dominant concessionaire” means any concessionaire /service provider so deemed under section 29(8) of the Act.

“Essential facility” means a facility in the access provider's network which an access seeker requires in order to provide its service and for which no practical or viable alternative exists.

“Local loop” means the network linking termination point at the end user premises to the main distribution frame or equivalent facility in a fixed public telephone network.

PART II GENERAL OBLIGATIONS

Obligation to provide access to facilities

4. All concessionaires for public telecommunications networks or broadcasting services shall:
 - a) have an obligation to provide access to their facilities, and such access should 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 settlement arbitrator or a court of law;
 - d) provide collocation services as designated in Part V of these Regulations.
5. (1) Subject to sub-section (3) below, concessionaires are required to supply to access seekers upon request, such information about their network and services as is necessary and sufficient for access seekers to plan and operate their

networks and services.

(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 access provider may request an extension in writing from the Authority not later than seven (7) days before deadline for supply of the information.

(3) The Authority may, in its discretion exempt particular information from the requirements of sub-section (1). A concessionaire seeking to have information so exempted shall make a written request to do so to the Authority not later than seven (7) days before the deadline for supply of the information, and the Authority shall notify both interested concessionaires of its determination. The Authority may revoke any such exemption at any time.

(4) All information provided under this Regulation 5 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 access supplier.

Requirement to enter into infrastructure sharing arrangements

6. Save and except where it is not technically feasible, where environmental, health and safety problems will be created, or where unreasonable risk to the integrity and or security of the network of the provider concessionaire is posed, infrastructure sharing arrangements are mandatory on all concessionaires for public telecommunications networks and broadcasting services.

PART III OBLIGATIONS ON DOMINANT CONCESSIONAIRES

Access to essential facilities owned or controlled by dominant concessionaire's

7. Where technically feasible, and except under the conditions described in Section 26(3) of the Act, a dominant concessionaire is obliged, upon request from an access seeker, to:

- (1) provide access to any essential facility which it owns or controls.
- (2) provide access to bundled or unbundled configurations of network components in accordance with the access seeker's request.
- (3) make available equipment and facilities used to combine

network components in the same manner it uses such equipment and facilities to combine components to provide a service for its own purposes or that of its subsidiary or partner.

8. The Authority may from time to time specify essential facilities to which a dominant concessionaire must provide access. Such facilities may include the following:
 - 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.
9. The services at section 8 may be varied from time to time by the Authority.

**PART IV
NON-DISCRIMINATION**

Conditions of access to be non-discriminatory

10.
 - (1) Concessionaires are obliged to apply equivalent conditions in equivalent circumstances to each other, and to provide access to facilities under the same conditions and of the same quality as they provide to themselves, or to their subsidiaries or partners.
 - (2) Where a concessionaire fails to comply with subsection (1) it must prove to the Authority that it is not technically feasible to replicate the quality level of the access resource provided for its own use.
11. (1) Previous successful access to a facility at a

particular point on a network is evidence of technically 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.

PART V COLLOCATION

Requirement to provide information for collocation

12. Access providers must specify, upon request from an access seeker, the availability of collocation services, 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.

Refusal of collocation

13. (1) If an access provider refuses an access seeker's request for physical collocation on the grounds of technical barriers or space limitation, it must offer virtual collocation.
- (2) Upon request from the Authority, an access provider must justify its refusal to offer physical collocation on the grounds of technical barriers or space limitation. Such justification must be submitted to the Authority in writing within seven (7) days.
- (3) The Authority has the right to enter the premises of an access provider to determine any claims of collocation space limitation.
- (4) Where the Authority deems such claims as unsubstantiated, it shall instruct, in writing, the access

provider to make arrangements for collocation in a time specified by the Authority.

(5) Where necessary, the Authority shall mandate an access provider to upgrade its facilities to provide requisite collocation space to access seekers. The efficient costs of such an upgrade may be recovered from the access seekers.

PART VI ACCESS AGREEMENT

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| Time for conclusion of access agreement | 14. A concessionaire shall use all reasonable endeavours to conclude an access agreement within sixty (60) days of the receipt of a request for access. Failure to do so shall constitute a dispute under Regulation 23. |
| Approval of access agreements involving dominant concessionaire | 15. Access agreements shall include prices for access to facilities as well as the technical, operational, billing and planning conditions for access. |
| Publication of access agreement | 16. Access agreements involving a dominant concessionaire, and modifications to those agreements, must have the approval of the Authority prior to taking effect and becoming binding on the signatory parties. The Authority shall not withhold approval without reason, and such reasons must be given within twenty-eight (28) days of submission of the agreement to the Authority by the dominant concessionaire. |
| | 17. Once an access agreement involving the dominant concessionaire has been approved by the Authority, it shall be published by the Authority within fourteen (14) days. |
| | 18. All concessionaires other than dominant concessionaires are free to negotiate commercial access agreements. Copies of these agreements shall be lodged with the Authority within twenty-eight (28) days of taking effect and becoming binding on the signatory parties. |

PART VII COMMERCIAL ARRANGEMENTS

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|----------------|--|
| Access charges | 19. All access charges shall be just and reasonable. |
| | 20. (1) The dominant concessionaire shall set access charges based on efficient costs determined by such costing methodologies, models or formulae as the Authority may from time to time require. |

(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 or/and prices for similar retail services in Trinidad & Tobago.

21. All dominant concessionaires shall:

(1) upon request, supply to the Authority data and analysis to demonstrate that its access charges in accordance with section 20 (1) of these Regulations.

(2) supply all data and analysis in reference to subsection (1), within twenty-eight (28) days of the date of receipt of the request, save and except where a time extension is granted in writing by the Authority.

PART VIII DISPUTE RESOLUTION

Request for consultation
and guidance

22. Where difficulty arises in respect of any access matter under negotiation, both concessionaires may agree to refer the matter to the Authority for consultation and guidance prior to either party submitting the matter to the Authority as a dispute.

23. Save as provided in Regulation 22 above, concessionaires shall submit all disputes regarding access to the Authority for resolution. Dispute resolution proceedings are deemed to be initiated once a matter is submitted to the Authority as a dispute.

Enforcement and
compliance regulations

24. A matter referred to the Authority as a dispute shall be resolved in the manner specified within the Enforcement and Compliance Regulations.

Made this day of 2005.

Chairman
Telecommunications Authority of
Trinidad and Tobago

Approved by the Minister this day of 2005.

Minister of Public Administration and
Information

Passed by the House of Representatives this day of
2005.

Clerk of the House

Passed by the Senate this day of 2005.

Clerk of the Senate