

Reference Number - TATT 4/07/07/5

**IN THE MATTER OF AN ARBITRATION
TELECOMMUNICATIONS AUTHORITY OF TRINIDAD
AND TOBAGO**

Section 82 of the Telecommunications Act 2001

Between

Columbus Communications Trinidad Limited

Complainant

And

Telecommunications Services of Trinidad and Tobago Limited

Respondent

JUDGEMENT ON PRELIMINARY ISSUES

1. Status of CCTL's concession

The Telecommunications Services of Trinidad and Tobago (TSTT) submitted in its preliminary objections, that CCTL must possess a concession for public international

telecommunication services via a public international telecommunications network in order to have standing.

A concessionaire as defined by the Interconnection Regulations is “the *holder of a concession issued under section 21 of the Act but does not include the holder of a concession to provide a broadcasting service;*” and the regulatory framework imposes interconnection obligations on concessionaires and interactions between concessionaires.

In the instant case, Columbus Communications Trinidad Limited (CCTL), in its submissions noted that by letter dated the 4th October 2015, it applied for a renewal of its Type 2, Type 4 and Type 5 concessions and copies of the cheques for the application fees were tendered. CCTL also produced a letter dated 22nd December 2015 from the Telecommunications Authority of Trinidad and Tobago (Authority) submitting drafts of the concessions to be granted. Although, CCTL in its submissions did not unequivocally indicate that it was granted the concessions, the Authority in correspondence dated the 28th September 2018 informed that Chairman of the Tribunal that:-

- i) CCTL’s Type 2 concession was renewed from 5th January 2016 to 4th January 2026;
- ii) CCTL’s Type 5 concession was renewed from 5th January 2016 to 4th January 2026

The grant of the type 2 concession to CCTL brings it within the definition of concessionaire as set out in the Interconnection Regulations and therefore within the ambit of the regulatory framework.

As such it now falls to be determined whether the CCTL requires a Type 4 concession in order to provide public international services. The Authority's letter to the Tribunal of the 28th September 2018 indicated that although CCTL applied for a renewal of its Type 4 concession, the senior management of the Authority was of the view that its Type 2 concession was sufficient. In other words the Authority decided that CCTL did not require a Type 4 concession because it was the holder of a Type 2 concession. The Authority reasoned that section 4.1.5 of the Authorization Framework sets out that where a domestic network based concession (i.e. Type 2 concession) interconnects with an international network based concessionaire in order to hand off traffic a domestic based concessionaire will not require an international telecommunications network concession.

Therefore with respect to the preliminary submission questioning the status of CCTL's concession and the claim that CCTL must possess a Type 4 concession the Tribunal finds that:-

- 1) CCTL's possession of valid Type 2 concessions brings it within the definition of concessionaire as set out in the Interconnection Regulations;
- 2) a Type 4 concession is not required to provide public international telecommunications services where the holder of a Type 2 concession interconnects with an international telecommunications concessionaire to hand off traffic; and
- 3) CCTL's Type 2 concession is sufficient to allow CCTL to pursue talks for the conclusion of an agreement on international incoming termination rates.

2. CCTL’s complaint discloses no circumstances that would activate dispute resolution process as per regulation 31 of Interconnection Regulations. The Interconnection Regulations set out two specific circumstances in which a party is entitled to bring a matter as a dispute. Those circumstances are outlined in Regulation 13 and 16.

The Tribunal finds that it possesses the authority to hear the matters outlined in the Notice of Dispute filed by CCTL and that the disputes that may be brought before the Tribunal are not limited to the circumstances outlined in Regulation 13 and 16 of the Interconnection Regulations.

The Telecommunications Authority of Trinidad and Tobago possesses a wide authority to treat with disputes. Section 82 (1) of the Telecommunications Act mandates that the Authority establish a dispute resolution process in the event of a complaint or dispute arising under s. 18 (1) (m) or 25 (2) (h), as required under s. 26 or “***in respect of any other matter that the Authority considers appropriate***”. Based on these provisions in the Act it is clear that the Authority possesses a wide discretion to treat with disputes.

With respect to interconnection, s. 25 (2) (h) permits the Authority the discretion to deal with any disputes that arise in relation to “***any aspect of interconnection, including the failure to conclude an agreement made pursuant to paragraph (e) or disputes as to price and any other technical or other term and condition or element of interconnection.***” This broad ability to treat with disputes over all aspects of interconnection extends to matters outside of the failure to conclude an interconnection agreement to include the pricing of interconnection.

In the instant case, although the parties agreed not to include the matter of wholesale incoming international termination rates in the interconnection agreement, this decision by the parties does not necessarily lead to the conclusion that the determination of such a rate is not an interconnection matter. These rates are incurred during the process of interconnection and whilst such rates may not be included in the interconnection agreement, disputes over price and methodology at arriving at the same fall under s. 25 (2) (h) and can be heard by the Authority under its dispute resolution procedure.

Having determined the lack of agreement over wholesale incoming international termination rates can be heard by the Tribunal the matter of process of bringing such disputes to the Tribunal must also be addressed. The Tribunal notes from its examination of the regulatory framework that disputes particularly with respect to interconnection matters must be dealt with expeditiously. Thus section 25 (2) (e) requires the holder of a concession to “***promptly negotiate upon the request of another concessionaire of a public telecommunications network or a public telecommunications service and endeavor to conclude, subject to paragraph (h) an agreement with regard to the prices and the technical and other terms and conditions for the elements of interconnection***” and section 25 (2) (h) mandates the **prompt** submission of disputes between concessionaires over the failure to conclude interconnection agreements, price, or any other term and condition for any element of interconnection.

Applications for the resolution of disputes must be in keeping with the dispute resolution process as established by the Authority and may involve consultation with the Authority prior to the activation of a formal dispute procedure. With respect to interconnection disputes,

regulation 31 of the Interconnection Regulations, states that

“Where a dispute arises between concessionaires with respect to interconnection, the matter may be referred to the Authority for consultation and guidance, on the agreement of both parties, prior to either party submitting the matter to the Authority as a dispute”, whilst regulation 32 states

“Save as provided in regulation 31, every dispute regarding inter- connection shall be submitted to the Authority for resolution in accordance with the dispute resolution process established by the Authority under section 82 of the Act.”

The use of the word **may** in regulation 31 is instructive as it clearly indicates that the joint submission of an interconnection matter for guidance and consultation is not a mandatory step to be followed before the submission of a dispute to the Authority. This position is reconfirmed in 4.1 of the Dispute Resolution Procedure which states that notification of a dispute is done **either jointly by mutual agreement of the parties or ex parte.**

Thus, the submission by TSTT that the parties must by consent tender to the Authority a dispute for guidance as a necessary step before the commencement of the dispute resolution process is an inaccurate interpretation of the relevant provisions of the legislation. Such interpretation if accepted would have the effect of lengthening interconnection negotiations and undermining the clear intention of the regulatory framework to treat interconnection matters promptly.

The Tribunal dismisses TSTT’s preliminary application.

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Ken Winfield Wright
Chairman

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Dr. Lester Henry
Member

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Mr. Phillip Cross
Member