

COMMONWEALTH OF DOMINICA

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COMMONWEALTH OF DOMINICA

STATUTORY RULES AND ORDERS No. 17 OF 2009

REGULATIONS

Made by the Minister under section 74 of the Telecommunications Act, 2000 (Act No. 8 of 2000).

(Gazetted 23rd April, 2009.)

1. (1) These Regulations may be cited as the-

Short title and commencement.

TELECOMMUNICATIONS (INTERCONNECTION) REGULATIONS, 2009.

(2) These Regulations shall come into force on the date of publication in the *Gazette*.

2. In these Regulations-

Interpretation.

“Act” means the Telecommunications Act 2000;

Act No. 8 of 2000.

“access deficit” means the difference between the costs incurred by the incumbent fixed public network operator for providing domestic telecommunications services, whose prices are regulated, and the maximum revenue that the operator can secure for providing those services under price regulation;

“Calling Line Identity” means the information generated by a telecommunications network that identifies the calling number;

“call termination” means the completion of a call that is originated on one public network and terminated on another;

“cost-oriented” means those charges equal to the long-run incremental cost of an efficient provider plus an appropriate portion of shared and common costs;

“dominant interconnection provider” means a public network operator who is designated by the Commission as dominant for the purposes of providing interconnection services under regulation 9; and “dominant fixed public network operator” shall have a corresponding meaning;

“interconnection provider” means a public network operator who receives a request to provide interconnection under the Act or Regulations;

“interconnection services” means services provided by a public network operator to another public network operator linking the public telecommunications networks or telecommunications services of both parties to allow the users of the public telecommunications services of either party to -

- (a) communicate with the users of the telecommunication services of the other; and
- (b) access the services provided by the other operator or service provider

“joining service” means a service consisting of a transmission facility connecting the points of interconnection of two public network operators, one of which may or may not be the provider of the service;

“number portability” means the ability of a customer to retain the same telephone number on changing telecommunications providers;

“phased manner” means to reduce or increase gradually or in stages;

“point of interconnection” means a location where the exchange of telecommunications between the telecommunications network of an interconnection provider and the telecommunications network of an interconnecting operator takes place;

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“public network operator” means a person who is licensed under the Act to operate a public telecommunications network;

“reference interconnection offer” means a document setting out the terms on which the dominant interconnection provider proposes to offer interconnection to a public network requesting interconnection;

“Register” means the register maintained pursuant to regulations 25, 26, 27 and 29;

“transit service” means the transmission and routing of the services of public network operators over the network of the provider of transit service.

(2) Unless otherwise specified, terms used in these Regulations shall have the meanings assigned to them under the Act.

3. A public network operator -

- (a) shall act in a manner that enables interconnection to be established as soon as reasonably practicable.
- (b) is required to promptly provide interconnection at cost-oriented rates to any other public network operator that requests it.
- (c) is entitled to promptly receive interconnection at cost-oriented rates from any other public network operator.
- (d) shall provide timely forecasts of usage to the interconnection provider and shall be required to cover the costs that the interconnection provider incurs to meet forecasted needs even if the forecasted traffic fails to materialize.

Rights and obligations
of public network
operators.

-
- (e) shall configure its network to enable -
- (i) transmission; and
 - (ii) switching or routing,
- of voice, data and images over its networks.
- (f) shall exchange signaling information using standard signaling systems.
- (g) is required to provide call-termination services to any other public network operator that requests them.
- (h) who is a party to an interconnection agreement shall provide written notice of any breach of the interconnection agreement and a reasonable period of time to cure the breach before terminating the interconnection agreement in accordance with the procedure set out in regulation 24.
- (i) shall make it possible for its customers to complete international calls using public network operators of their choice, and such choice shall be available on a call-by-call basis, with the call being completed without the requirement either of second dial tone or manual intervention.

Obligations of dominant fixed public network operators.

4. (1) In addition to the obligations placed on all public network operators in regulation 3, a dominant fixed public network operator shall -

- (a) provide joining services to any other public network operator that requests them;
- (b) provide usage-based transit services to other public network operators that request them; or

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(c) where it provides broadband Internet access as a retail service, arrange to carry the broadband information to unaffiliated Internet service providers of the end user customer's choice.

5. A public network operator shall configure its network to facilitate number portability between similar networks as and when directed by the Commission, acting on the recommendation of ECTEL. Number portability.

6. (1) When providing interconnection, a public network operator shall act in accordance with the following principles - Non-discrimination and transparency.

(a) interconnection shall be provided to interconnecting operators under no less favourable terms and of no less favourable quality as the interconnection provider provides similar services for itself or its affiliates;

(b) interconnection shall be provided without regard to the types of users to be served or the types of services to be provided by the public network operator requesting interconnection;

(c) a public network operator shall provide on request information reasonably necessary to interconnecting operators considering interconnection, in order to facilitate the conclusion of any agreements.

(2) The information provided pursuant to sub-regulation (1)(c) shall include planned charges for implementation within the next six months following a request, unless otherwise agreed by the Commission.

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(3) When a public network operator concludes an interconnection agreement, it shall -

- (a) offer the terms and conditions of such an agreement to any other public network operator requesting interconnection; and
- (b) offer the terms and conditions of such an agreement, upon request, to any other public network operator with which it has an existing interconnection agreement, except to the extent that it can prove to the satisfaction of the Commission that it is not technically feasible to replicate the same level of quality of the interconnection or to provide interconnection under the same terms and conditions as it provides pursuant to such an agreement.

(4) The Commission shall take such steps as may be necessary to ensure that the requirements under this regulation are being met.

Confidentiality.

7. A public network operator shall not knowingly communicate, or allow access to any confidential, proprietary, or competitive information, including but not limited to, customer orders, market forecasts, plans for development of new customers, received from another public network operator in respect of interconnection, except to the extent authorized by the operator in writing, or by the Act or these Regulations.

Access to facilities.

8. (1) Where access to any facilities is required to effect interconnection such access shall be provided on a non-discriminatory and equitable basis, including with respect to charges, location and other commercial matters, together with the interconnection.

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(2) Pending the conclusion of any agreement between parties to a negotiation for access to facilities, and subject to regulation 30, the Commission may, acting on the recommendation of ECTEL, issue such orders or directions for the sharing of any facilities or with respect to providing access to such facilities on an interim basis.

9. (1) The Commission, acting on the recommendation of ECTEL, and by notice or order published in the Gazette, shall designate a public network operator as a dominant interconnection provider in a particular market or markets for telecommunications services if the Commission has determined, after a public consultation process, that a public network operator -

Dominant
interconnection
provider.

- (a) enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers in a market or markets for telecommunications services; and
- (b) it is in the long-term interests of consumers of telecommunications services that the public network operator be so designated.

(2) The Commission shall undertake a consultation process which will commence with a preliminary determination of market dominance and the designation of one or more dominant interconnection providers.

(3) The Commission shall issue its final determination of market dominance no later than 90 days after its preliminary determination of dominance under subregulation (2).

(4) Notwithstanding the sub-regulations (1), (2) and (3), a public network operator may consent to being treated as a dominant interconnection provider solely for the purpose of providing interconnection and filing a reference interconnection offer at the time it files a reference interconnection offer.

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Publication of information.

10. (1) The Commission shall have available, for the use of the general public, documentation on interconnection that is adequate and current.

(2) The Commission shall use any medium that it considers appropriate to inform the public of the documentation available pursuant to sub-regulation (1).

(3) The Commission may impose an administrative fee for providing the documentation to any person.

Rate structure.

11. (1) The Commission shall, acting on the recommendation of ECTEL, determine upon its own motion or upon an application by any person, the interconnection rate of any person who provides or offers to provide interconnection.

(2) Interconnection rates shall be cost-oriented and imposed in a transparent manner and shall identify clearly -

(a) charges for interconnection services; and

(b) any contribution to the access deficit of the interconnection provider, where applicable.

(3) Where an interconnection agreement is negotiated before the Commission has determined any rates, or where, after the conclusion of any interconnection agreement, the Commission establishes new rates for interconnection for any reasons, the agreement shall be amended by the parties to comply with such rates as may subsequently be determined.

(4) Notwithstanding sub-regulation (2), the Commission may impose cost-oriented rates in a phased manner and on such terms and conditions as may be determined by the Commission, acting on the recommendation of ECTEL.

Reference Interconnection offer.

12. (1) Each dominant interconnection provider requested to provide a reference interconnection offer shall provide such an offer within 60 days of its receipt of such request by the Commission.

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(2) A reference interconnection offer shall make available to public network operators those services and network elements necessary for the provision of competing retail services.

(3) The reference interconnection offer provider may set different rates, terms and conditions for different interconnection services, where such differences can be objectively justified and do not result in the unfair distortion of competition.

(4) The reference interconnection offer provider shall apply the appropriate interconnection tariffs, terms and conditions when providing interconnection for its own services or those of its affiliates, subsidiaries or partners.

(5) The charges of the reference interconnection offer shall be sufficiently unbundled to ensure that the interconnecting operator requesting interconnection is not required to pay for services not related to the service requested.

(6) Interconnection rates set out in the reference interconnection offer shall be cost-oriented.

(7) The reference interconnection offer shall contain specific provisions for dispute resolution procedures including the appropriate contact persons whose names and other contact information shall be updated at least quarterly, precise time frames for resolution of complaints, clear and concise escalation procedures that allow for prompt resolution of disputed issues and rules that shall be used for arbitrating any unresolved issues.

(8) The Commission has the authority to ensure that a reference interconnection offer is compliant with the Act and Regulations and contains rates that are cost-oriented.

13. Within 7 days of approval of a reference interconnection offer by the Commission, a dominant interconnection provider shall publish its offer by -

Publication of Reference
Interconnection Offer.

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- (a) posting the offer on its website; and
- (b) making printed and electronic copies of the offer available to any public network operator upon request.

Payment for interconnection.

14. Subject to the right of the Commission, acting on the recommendation of ECTEL, to determine that every cost imposed on a public network operator in respect of interconnection is just and reasonable, a public network operator shall pay for the investment, operations, and maintenance expenses of the facilities necessary to reach the point or points of interconnection.

Calling line identity.

15. Every public network operator shall provide upon request to other public network operators, the Calling Line Identity and all necessary signaling data, in accordance with accepted international standards and any technical standards set by and published by the Commission from time to time.

Form and contents of interconnection agreements.

16. (1) All interconnection agreements and reference interconnection offers shall be in writing and the following matters shall be specified in those agreements except where a particular matter is irrelevant to the specific form of the interconnection requested-

- (a) access to ancillary, supplementary and advanced services;
- (b) adequate service levels including the remedies for any failure to meet those service levels;
- (c) a provision that deals with regulatory change, including determinations by the Commission;
- (d) duration and renegotiation of interconnection agreements;
- (e) forecasting, ordering, provisioning and testing procedures;
- (f) dispute resolution procedures, including identification of points of contact, time frames and an escalation process;

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- (g) geographical and technical characteristics and locations of the points of interconnection;
- (h) information handling and confidentiality provisions;
- (i) intellectual property rights;
- (j) measures anticipated for avoiding interference or damage to the networks of the parties involved or third parties;
- (k) national and international appropriate indexes for service quality;
- (l) procedures in the event of alterations being proposed to the network or service offerings of one of the parties;
- (m) provisions for the formation of appropriate working groups to discuss matters relating to interconnection and to resolve any disputes;
- (n) provision of network information;
- (o) technical specifications and standards;
- (p) terms of payment, including billing and settlement procedures;
- (q) the procedures to detect and repair faults, as well as an estimate of acceptable average indexes for detection and repair times;
- (r) the scope and description of the interconnection services to be provided;
- (s) the technical characteristics of all the main and auxiliary signals to be transmitted by the system and the technical conditions of the interfaces;
- (t) transmission of Calling Line Identity, where available to be transmitted;
- (u) provisions for call termination;

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- (v) provisions for transit facilities;
- (w) provisions for joining links;
- (x) ways and procedures for the supply of other services that the parties agree to supply to each other, such as operation, administration, maintenance, emergency calls, operator assistance, automated information for use, information on directories, calling cards and intelligent network services;
- (y) the obligations and responsibilities of each party in the event that inadequate or defective equipment is connected to their respective networks;
- (z) provisions for notice and for remedying any breach that may arise from the agreement; and
- (aa) any other relevant issue.

(2) Public network operators shall make available to interested parties, any reference interconnection offers and the portions of approved interconnection agreements that have not been designated as confidential by the Commission pursuant to regulation 27.

Connectivity.

17. An interconnection agreement shall include provision for any-to-any connectivity to allow any end-user of that network to communicate with any other end-user of public telecommunications services, regardless of whether the end-users are connected to the same, or different, networks.

Non-inclusion.

18. An interconnection agreement shall not contain any provision which has the effect of-

- (a) imposing an unfair or discriminatory penalty or disadvantage upon a person in the exercise of the person's right to be provided with interconnection;

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- (b) precluding or frustrating the exercise of a person's rights or privileges afforded under the Act or Regulations; and
- (c) preventing a licensee from lawfully providing an interconnection service to another public network operator.

19. (1) A public network operator shall make a request for interconnection in writing to an interconnection provider and shall forward two copies of the written request to the Commission, one of which shall be addressed to ECTEL. Notice of request.

(2) A request for interconnection shall contain at least the following information -

- (a) a copy of the licence of the interconnecting operator;
- (b) the services with respect to which interconnection is sought;
- (c) a declaration by the public network operator that it accepts the rights and obligations of all public network operators as set out in regulation 3; and
- (d) any other information as specified in the reference interconnection offer or reasonably required in order for the telecommunications provider to respond to that request.

(3) Notwithstanding sub-regulation (1), any person who has applied for a telecommunications licence under the Act, but whose application is still pending, may make an interconnection request and conclude an interconnection agreement, except that a notice of request from such an applicant shall not include a copy of a licence under sub-regulation (2).

(4) The effecting of interconnection in accordance with a request under sub-regulation (3) shall be conditional upon a grant of a licence to the applicant.

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Procedures for application.

20. (1) Within 30 days after the parties to a negotiation regarding interconnection have concluded an interconnection agreement, the parties shall submit the proposed agreement to the Commission for its approval.

(2) The Commission shall approve the proposed interconnection agreement if it is satisfied that the proposed interconnection agreement is not inconsistent with the Act, these Regulations, the terms and conditions of the parties' licenses or other provisions of law.

(3) The Commission shall consult with ECTEL for its advice and recommendations concerning the application, before determining whether to approve the proposed interconnection agreement.

(4) The Commission may request additional information from the parties to a proposed interconnection agreement where it considers it necessary to further evaluate the terms, conditions and charges contained in the proposed inter-connection agreement.

(5) Where the Commission notifies the parties that it does not consider that the proposed interconnection agreement should be approved, the parties to that agreement shall negotiate and submit a revised proposed interconnection agreement to the Commission, within a reasonable period determined by the Commission having regard to the matters being the subject of the Commission's request.

(6) Notwithstanding the Commission's right to approve an interconnection agreement, where a proposed interconnection agreement is substantially the same as an existing agreement already approved by the Commission, such an agreement may provide that it will be effective upon submission to the Commission and will remain effective unless the Commission informs the parties to such agreement, within 60 days of its submission, or such longer period as the Commission may reasonably require, that it has not approved the agreement.

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(7) Sub-regulation (6) does not apply where the parties to an interconnection negotiation have concluded an agreement after the effective date of any interim interconnection decision imposed by the Commission, pursuant to the procedures specified in regulation 31.

21. A party shall not negotiate, propose to enter or enter into an interconnection agreement where the Commission determines that-

Prohibited interconnection.

- (a) the proposed interconnection is contrary to the Act, these Regulations, the terms and conditions of the parties' licenses or other provisions of law; or
- (b) the requested interconnection is not technically feasible; or

22. (1) The parties to an interconnection agreement may amend or modify an agreement which has been approved by the Commission by-

Amendment or modification of interconnection agreement.

- (a) giving not less than 30 days written notice prior to the effective date of the amendment or modification; and
- (b) submitting a copy of the proposed amendment or modification to the Commission.

(2) An amendment or modification to an interconnection agreement does take effect unless approved by the Commission within 30 days of the submission, or such longer period as the Commission may in any case determine.

23. (1) An interconnection agreement shall include provision for the suspension of the agreement in the event of -

Suspension of an interconnection agreement.

- (a) conduct that is illegal or interferes with the obligations of the interconnection provider, under the relevant licence, Act or Regulations;

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- (b) requirements that are not technically feasible;
- (c) health or safety problems; or
- (d) circumstances that pose an unreasonable risk to the integrity or security of the network or services of the interconnection provider, from which interconnection is requested.

(2) An interconnection agreement shall include a provision to allow for the suspension of interconnection where it is necessary to deal with a material degradation of the interconnection provider's telecommunications network or services.

(3) Parties to an interconnection agreement shall provide at least 15 days notice to the Commission prior to suspending the agreement.

(4) The suspension of an interconnection agreement does not take effect unless approved by the Commission, acting on the recommendation of ECTEL.

Termination of an interconnection agreement.

24. (1) Parties to an interconnection agreement shall provide at least 30 days notice to the Commission and to customers before terminating any interconnection agreement that will result in the loss to those customers of an essential service.

(2) A notice under subregulation(1) shall inform customers of the date upon which any services will be interrupted and shall also inform them of appropriate steps that can be taken to obtain such services from another operator.

(3) Notwithstanding the right of the parties to terminate an interconnection agreement, the Commission, acting on the recommendation of ECTEL, shall have the authority to require any party to provide interconnection on such terms and conditions and at such rates as the Commission considers appropriate, pending renewal or replacement of the interconnection agreement.

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25. (1) All copies of an interconnection agreement shall be kept in a register maintained by the Commission in print form, or as a database in electronic medium, and in any other form determined by the Commission. Register.

(2) The Register shall be kept at the principal office of the Commission and Parts I and III of the Register shall be open to public inspection during normal working hours.

(3) A copy of the Register shall be provided to ECTEL.

26. The Register shall be maintained in 3 parts as follows - Contents of Register.

(a) Part I containing a list of all interconnection agreements with the names of interconnection providers, service areas of their operation, and the dates of the execution of the agreements, and shall be opened for inspection by the public;

(b) Part II containing portions of interconnection agreements which the Commission has directed to be kept confidential; and

(c) Part III containing the contents of interconnection agreements excluding those directed by the Commission to be kept confidential which shall be open for inspection by the public.

27. (1) The Commission may, on the request of any party to an interconnection agreement, direct that any part of the interconnection agreement be kept confidential. Confidential portion of Register.

(2) Any request to keep part of an interconnection agreement confidential shall be accompanied by a non-confidential description of the relevant portion of the interconnection agreement.

(3) Where the Commission is satisfied that the interests of a telecommunications provider could be adversely affected if

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the relevant part were not kept confidential, it may direct that the relevant part of the interconnection agreement be kept confidential and the non-confidential description of that part must be incorporated in Part III of the Register.

(4) Where the Commission declines the request of any public network operator to keep any portion of the interconnection agreement confidential, it shall record its reason for doing so and furnish a copy of its decision to the applicant.

(5) Before making any decision to disclose confidential information, the Commission shall afford a hearing to the public network operator who has requested the information be kept confidential.

(6) Whenever a public network operator requests that any part of an interconnection agreement should be kept confidential, that portion of the agreement shall remain confidential until the matter is determined by the Commission.

Format for separating information.

28. (1) The Commission may, from time to time, determine the format for seeking disaggregated information of parts of an interconnection agreement relating to technical standards or specifications from the Register in respect of -

- (a) access charges;
- (b) area of operation;
- (c) consumer related information;
- (d) downtimes;
- (e) fault resolving procedures;
- (f) interconnection;
- (g) port charges;
- (h) quality of service; and
- (i) revenue-sharing arrangements.

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(2) Each licensee shall offer such assistance to the Commission in relation to disaggregating information pursuant to this regulation as it may reasonably require.

29. (1) Parts I and III of the Register shall be open for inspection by the public on payment of the administrative fee and on the fulfillment of any other condition determined by the Commission.

Access to Register.

(2) Any person seeking inspection of Parts I or III of the Register shall apply to the officer designated by the Commission who shall allow inspection and also make available extracts of the relevant portions of the Register, on payment of the prescribed fee.

(3) The Commission may in accordance with sub-regulations (1) and (2) also allow access to Parts I and III of the Register through the website maintained by it.

30. (1) Notwithstanding anything to the contrary contained in other law, where the parties to any proposed interconnection agreement are unable to agree on the terms thereof within 60 days from the date of a request for interconnection under regulation 19, either party may submit the matter to the Commission for resolution in accordance with such procedures as the Commission may adopt, acting on the recommendation of ECTEL.

Dispute resolution.

(2) Where no request has been received by the Commission after 60 days pursuant to sub-regulation (1), the Commission may, acting on its own motion, direct the parties to submit the matter for resolution.

(3) Notwithstanding sub-regulation (2), the Commission may withhold from directing the parties for an additional 30 days where it is reasonably satisfied by both parties that an interconnection agreement is likely to be concluded within that time.

(4) Any decision made by the Commission pursuant to sub-regulations (1) and (2) shall be binding on the parties pending agreement between them on the terms of any proposed interconnection agreement.

(5) The decision by the Commission shall -

(a) be made within 60 days from the date of a request under sub-regulation (1) or a direction by the Commission under sub-regulation (2), or such longer period as the Commission may in any case determine; and

(b) specify -

(i) the facilities and the network covered by the decision;

(ii) the extent of any network over which one party is required to carry information and communication messages including telecommunication message to enable another party to supply services;

(iii) the points of, and the technical standards for, interconnection;

(iv) the rates of interconnection;

(v) the effective date of the decision; and

(vi) any other matters it deems appropriate.

(6) The parties to the decision under sub-regulation (5) shall submit to the Commission a copy of an interim interconnection agreement implementing the terms and conditions of the decision, together with any other information the Commission may require.

(7) An interim interconnection agreement shall cease to have effect on the date a proposed interconnection agreement agreed between the parties is approved by the Commission.

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(8) The existence of an interim interconnection agreement shall in no way prejudice, vary, or diminish the right of the Commission to review, approve or reject any proposed interconnection agreement between the parties.

(9) The Commission may, acting on the recommendation of ECTEL, make the terms and conditions of an interim interconnection agreement final where the parties are unable to conclude any agreement prior to the expiration of one year from the effective date of the Commission's decision under sub-regulation (5).

(10) In the exercise of any of the functions conferred upon it by virtue of sub-regulations (1) to (9), the Commission shall have the authority, acting on the recommendation of ECTEL, to make such orders and issue such directions to the parties as it deems appropriate.

31. (1) In any dispute involving an approved interconnection agreement between parties thereto, and notwithstanding the terms of any dispute resolution procedures described in the agreement, the parties may agree to refer the dispute to the Commission for a binding resolution in accordance with such procedures and upon such terms and conditions as the Commission, acting on the recommendation of ECTEL, may determine.

Disputes regarding existing agreements.

(2) In referring any dispute under sub-regulation (1), the parties may request the Commission to issue an interim decision on providing interconnection, and the interim decision may address prices and any other terms or conditions for interconnection which the Commission, acting on the recommendation of ECTEL, may determine.

(3) A decision by the Commission under sub-regulation (1) or (2) shall be final and binding on the parties with respect to the matters being the subject of the dispute, but shall not replace, vary or otherwise amend the provisions relating to dispute resolution contained in the interconnection agreement.

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Amendment due to
dispute resolution.

32. Where a decision arising from a dispute resolution process modifies the terms and conditions on which interconnection is provided, the Commission may require a public network operator to amend a relevant agreement in order to comply with the decision and submit the amended agreement to the Commission for approval.

Renewal of
interconnection
agreements.

33. (1) At least 90 days prior to the expiration of an approved interconnection agreement, a public network operator shall submit a revised interconnection agreement to the Commission for approval where such an agreement is to be renewed or extended.

(2) The renewal or extension of an interconnection agreement under sub-regulation (1) does not take effect unless approved by the Commission, acting on the recommendation of ECTEL.

Power of referral.

34. If a public network operator refuses to obey any order, decision or direction by the Commission under these Regulations, the Commission may apply to a judge of the High Court for an order compelling the public network operator to comply with the order, decision or direction of the Commission and for such costs and other relief as the Court may allow.

Interconnection code.

35. The Commission, acting on the recommendation of ECTEL -

(a) may issue an Interconnection Code to give purpose and effect to these Regulations, setting out such guidelines, procedures, standards and other requirements as the Commission may issue or specify;

(b) shall publish the Code, or parts thereof, in the Gazette and on its website;

(c) may amend, add to or replace the Code at any time.

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36. The Telecommunications (Interconnection) Regulations 2002 are hereby repealed.

Repeal.
S.R.O. No. 6 of 2002.

Made this 14th day of April, 2009.

REGINALD AUSTRIE
Minister for Telecommunications

DOMINICA

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