

COMMONWEALTH OF DOMINICA

ARRANGEMENT OF REGULATIONS

REGULATIONS

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2010

TELECOMMUNICATIONS

S.R.O. 36

COMMONWEALTH OF DOMINICA

STATUTORY RULES AND ORDERS No. 36 OF 2010.

REGULATION

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

(Gazetted 30th December, 2010.)

1. These Regulations may be cited as the-

Short title.

TELECOMMUNICATIONS (ACCESS TO FACILITIES) REGULATIONS 2010.

2. (1) In these Regulations -

Interpretation.

“Act” means the Telecommunications Act, 2000;

Act No. 8 of 2000.

“infrastructure sharing agreement” means an agreement between two public network operators setting out their respective rights and obligations with respect to providing access to and sharing of their telecommunications networks and facilities including towers, sites and underground facilities;

“telecommunications code” means a document published by the Commission setting out rules, guidelines and procedures on telecommunications related matters, including access to facilities and co-location.

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

Application.

3. (1) These Regulations apply to all telecommunications networks and facilities and any physical component of a telecommunications network, including towers, sites, underground facilities, wires, lines, terrestrial and submarine cables, wave guides, optics or other equipment or object connected therewith, used for the purpose of telecommunications, as well as any post, pole, tower, standard, braket, stay, strut, insulator, pipe, conduit, or similar thing used for carrying, suspending, supporting or protecting the structure, but does not apply to terminal equipment.

(2) These Regulations apply to all telecommunications providers with respect to the operation of all telecommunications networks and the provision of all telecommunications services and to -

(i) agreements for sharing of;

(ii) requests for access to,

such telecommunications networks and facilities.

Powers of the Commission.

4. (1) The Commission may regulate the rates, terms and conditions for access to any facility or telecommunications network, such rates, terms and conditions to be just and reasonable and it may adopt procedures necessary and appropriate to resolve disputes concerning the rates, terms and conditions.

(2) Subject to the right of public network operators to conclude the terms and conditions of access to facilities in a proposed interconnection agreement, every infrastructure sharing agreement shall be submitted to the Commission for its approval.

Obligation to provide access.

5. (1) Every public network operator shall offer to provide and provide access to facilities that it owns or controls, on a non-discriminatory and equitable basis, including with respect to charges, location, and other commercial matters.

(2) A public network operator may deny access only where it can demonstrate to the satisfaction of the Commission that -

- (a) there is insufficient capacity in such facility, taking into account its reasonably anticipated requirements; or
- (b) for reasonable technical grounds.

(3) Where the provision of access to any facility as required by these Regulations is not technically feasible, the Commission may, acting on the recommendation of ECTEL, make such orders or issue such directions to a public network operator as it considers appropriate, to facilitate alternative access arrangements, including, but not limited to -

- (a) virtual co-location;
- (b) conditioning additional equipment;
- (c) optimizing the use of existing space, or;
- (d) finding adjacent space.

6. (1) Prices for access to and use of different facilities may vary according to the facilities involved, but must be just, reasonable and based on the costs of the owner of the facilities.

Prices for access.

(2) Every public network operator shall make available, on request, prices for access to and use of facilities that it owns in a manner that is -

- (a) clear and unambiguous; and
- (b) disaggregated such that the telecommunications provider requesting access shall only have to pay for access to those facilities or parts of the network it requires to provide the services involved.

(3) The Commission may require a public network operator to publish the prices for access on the operator's website and in an appropriate publicly available document.

Negotiating access.

7. (1) A public network operator may at any time, make an application to another operator for access to facilities that it owns or controls.

(2) On receipt of a request, an operator must promptly provide the terms and conditions for access.

(3) The party offering access and the party requesting access shall promptly on receipt of the request, commence negotiations in good faith with the objective of concluding an infrastructure sharing agreement.

(4) Where the parties to a proposed infrastructure sharing agreement are unable to agree on the terms of the agreement within sixty days from the date of the application under subregulation (1) either party may request the Commission to resolve the matter, in accordance with such procedures as the Commission, acting on ECTEL's recommendation, may adopt.

(5) Any decision by the Commission under subregulation (4) is binding on the parties.

(6) The Commission shall make a decision on the matter within sixty days from the date of the referral to the Commission.

(7) Notwithstanding subregulations (1) to (6), a party offering access and a party requesting access may conclude such arrangements at the time of negotiating interconnection.

Co-Location.

8. (1) The Commission may direct an operator to provide co-location or other forms of infrastructure sharing on the basis of commercially negotiated rates and other terms and conditions.

(2) Where operators are unable to reach an agreement regarding compensation for co-location or other forms of infrastructure sharing, the Commission shall impose rates based on costs, where appropriate.

(3) Where the Commission makes a decision to impose co-location or other forms of infrastructure sharing, the Commission may take into account -

- (a) the need to promote and safeguard competition, including the ease of market entry;
- (b) the costs of duplicating the facilities or utility installations, including the technical or economic viability of installing other facilities;
- (c) the environmental implications of deploying separate types of facilities by multiple operators;
- (d) the reasonably anticipated requirements of the operator;
- (e) issues relating to public health and safety, security, reliability or difficulties of a technical or engineering nature;
- (f) the initial investment of the owner of the facilities involved; and
- (g) any other matters it considers appropriate.

9. (1) The Commission, acting on the recommendation of ECTEL, may direct a dominant operator to -

Obligations of dominant operators.

- (a) allow another operator to co-locate its facilities in buildings housing any switches at which the operator is required to permit interconnection in accordance with these Regulations or the Telecommunications (Interconnection) Regulations, at any satellite earth station, at any radio tower, at any telecommunications equipment

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rooms in commercial or residential buildings or at such other locations as the Commission may determine;

(b) provide equipment space, power, site maintenance and security, subject to taking reasonable security precautions in connection with affording such other operator access to its own facilities, at each such site; and

(c) afford such other operator access to its co-located facilities on a basis no less favourable than the operator affords itself.

(2) A dominant operator shall not restrict the type of co-located facilities in accordance with subregulation (1)(a) provided it is a type of telecommunications equipment customarily located in such locations.

(3) A dominant operator is not required to construct additional buildings to accommodate requests for co-location or provide co-location for the staff or personnel of another operator except as such operator may occasionally require, from time to time, to service or repair its co-located equipment.

Publication of code.

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

(a) may establish rules in a relevant telecommunications 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.

Made this 28th day of December, 2010.

AMBROSE GEORGE
Minister for Telecommunications