
COMMONWEALTH OF DOMINICA

STATUTORY RULES AND ORDERS No. 6 OF 2002

REGULATIONS

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

(Gazetted April 11, 2002).

PART I

PRELIMINARY

1. These Regulations may be cited as the -

Short title.

**TELECOMMUNICATIONS
(INTERCONNECTION) REGULATIONS 2002.**2. These Regulations shall come into force on the date of
publication in the *Gazette*.

Commencement.

3. In these Regulations -

Interpretation.

“Act” means the Telecommunications Act, 2000.

8 of 2000.

“cellular mobile services” means telecommunications services
comprising radio communications via a cellular mobile
telecommunications network;“cellular mobile telecommunications network” means a tel-
ecommunications network that permits telecommunica-
tions while the user is in motion and that provides for
inter-cell hand-over during telecommunications.“Calling Line Identity” means the information generated by a
telecommunications network that identifies the calling
number;

“essential service” means a telecommunications service designated as such by the Commission under regulation 8 of these Regulations;

“interconnecting operator” means a public network operator who requests interconnection from another public network operator under section 46(2) of the Act;

“interconnection capacity” means the ability to provide interconnection;

“interconnection provider” means a public network operator who receives a request to provide interconnection under section 46(3) of the Act;

“dominant interconnection provider” means an interconnection provider designated by the Commission as a dominant interconnection provider under regulation 9 of these Regulations;

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

“private network operator” means a person who is licensed to operate a private telecommunications network;

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

“reference interconnection offer” (RIO) means a document setting out the terms on which the telecommunications provider proposes to offer interconnection services and that includes a description of the interconnection and other services offered to interconnecting operators and specifies the charges and other terms and conditions on which those services are offered (and “reference interconnection offer provider” shall have the corresponding meaning).

4. (1) An interconnecting operator shall notify the Commission of any request for interconnection by forwarding 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; and
- (c) any other information as specified in the RIO or reasonably required in order for the telecommunications provider to respond to that request.

5. An interconnection provider and an interconnecting operator shall act in a manner that enables interconnection to be established as soon as reasonably practicable.

Equal responsibility.

6. (1) In providing interconnection, an interconnection provider shall act in accordance with the following principles -

Non-discrimination
and transparency

- (a) interconnection shall be provided on non-discriminatory terms and conditions including charges and quality of service;
- (b) 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; and
- (c) an interconnection provider 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 shall include planned changes for implementation within the next six months following a request, unless otherwise agreed by the Commission.

Confidentiality.

7. (1) A person shall not knowingly communicate, or allow access to information received from a telecommunications provider in respect of interconnection, except to the extent authorised by the telecommunications provider in writing, or by the Act.

(2) An interconnection provider shall not be required, in connection with any legal proceedings, to produce any statement or other record containing information referred to in paragraph 1, or to give evidence relating to it, unless the proceedings relate to the enforcement of this Act.

(3) Subregulations (1) and (2) shall not apply where the proceedings are under any legislation relating to the suppression of terrorism.

Essential service.

8. The Commission, acting on the recommendation of ECTEL, shall, by notice published in the *Gazette*, designate as an essential service in Dominica any telecommunications service with respect to which the Commission has determined after a public consultation process that:

- (a) access to that service is essential for participation in a downstream telecom-munications market;
- (b) it would not be economically feasible for an interconnecting operator to replicate or otherwise obtain the service from itself or another person; and
- (c) it is in the long-term interests of consumers of telecom munications services in Dominica that the service be so designated.

Dominant intercon-
nection provider.

9. The Commission shall, acting on the recommendation of ECTEL, by notice published in the *Gazette*, designate as a dominant telecommunications provider in respect of a particular telecommunications market or markets in Dominica if the

Commission has determined that, after a public consultation process, with respect to that telecommunications provider, it -

- (a) possesses significant market power with respect to the market or markets for telecommunications services in Dominica; and
- (b) is in the long-term interests of consumers of telecommunications services in Dominica that the service be so designated.

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

Publication of information.

(2) The Commission shall use any media that it considers appropriate to inform the public of the documentation available pursuant to subregulation 1.

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

11. The burden of proving that interconnection rates are reasonable cost-oriented rates shall lie with the inter-connection provider.

Burden of proof.

12. (1) The interconnection rates shall be imposed in a transparent manner and shall identify clearly -

Rate structure.

- (a) charges for interconnection services; and
- (b) any contribution to the interconnection provider's access deficit, where applicable.

(2) Charges for interconnection services shall be cost-oriented, where "cost-oriented" means those charges shall be no higher than the fully allocated cost of providing that service and no lower than the total service long-run incremental cost of providing that service.

(3) Services other than interconnection services provided to an interconnecting operator shall be provided at a rate not exceeding the best retail prices minus avoidable costs of the dominant interconnection provider provided that such prices are not less than the total service long-run incremental cost of the dominant interconnection provider.

Reference interconnection offer.

13. (1) Each dominant interconnection provider shall publish a reference interconnection offer.

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

(3) 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.

(4) 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.

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

Points of interconnection.

14. (1) An interconnection provider shall offer interconnection services at any technically feasible point of its telecommunications network, upon request by an interconnecting operator, which shall pay for the investment, operations and maintenance expenses of the facilities necessary to reach the point or points of interconnection within the network of the interconnection provider.

Calling line identity.

15. Every interconnecting operator and interconnection provider shall offer, upon request, the Calling Line Identity and all necessary signalling data, in accordance with accepted international standards and any codes which may be issued by the Commission.

16. (1) All interconnection agreements and reference interconnection offers must 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 -

Form and contents of agreement.

- (i) access to ancillary, supplementary and advanced services;
- (ii) adequate capacity and service levels including the remedies for any failure to meet those service levels;
- (iii) a provision that deals with regulatory change, including determinations by the Commission;
- (iv) duration and renegotiation of interconnection agreements;
- (v) forecasting, ordering, provisioning and testing procedures;
- (vi) dispute resolution procedures;
- (vii) geographical and technical characteristics and locations of the points of interconnection;
- (viii) information handling and confidentiality provisions;
- (ix) intellectual property rights;
- (x) measures anticipated for avoiding interference or damage to the networks of the parties involved or third parties;
- (xi) national and international appropriate indexes for service quality;
- (xii) procedures in the event of alterations being proposed to the network or service offerings of one of the parties;
- (xiii) provisions for the formation of appropriate working groups to discuss matters relating to interconnection and to resolve any disputes;

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- (xiv) if appropriate, provision of infrastructure sharing and identification of collocation and their terms;
 - (xv) provision of network information;
 - (xvi) technical specifications and standards;
 - (xvii) terms of payment, including billing and settlement procedures;
 - (xviii) the maintenance of end-to-end quality of service;
 - (xix) the procedures to detect and repair faults, as well as an estimate of acceptable average indexes for detection and repair times;
 - (xx) the scope and description of the interconnection services to be provided;
 - (xxi) the technical characteristics of all the main and auxiliary signals to be transmitted by the system and the technical conditions of the interfaces;
 - (xxii) transmission of Calling Line Identity, where available to be transmitted;
 - (xxiii) 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;
 - (xxiv) any other relevant issue; and
 - (xxv) the obligations and responsibilities of each party in the event that inadequate or defective equipment is connected to their respective networks.

(2) Public network operators shall make available to interested parties, proposed interconnection agreements or reference interconnection offers.

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

Connectivity.

(2) An interconnection agreement shall include provision for the suspension, termination or amendment of the agreement in the event of -

- (a) conduct that is illegal or interferes with the obligations of the telecommunications provider, under the relevant licence, Act or Regulations;
- (b) requirements that are not technically feasible;
- (c) health or safety problems;
- (d) requirements for space that is unavailable; or
- (e) circumstances that pose an unreasonable risk to the integrity or security of the network or services of the telecommunications provider, from which the sharing arrangement is requested.

(3) 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 telecommunications network or services.

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

Non-inclusion.

- (a) imposing any unfair or discriminatory penalty or disadvantage upon a person in the exercise of the person's right to be provided with interconnection;
- (b) precluding or frustrating the exercise of a person's rights or privileges afforded under the Act or Regulations; and

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- (c) preventing a licensee from lawfully providing an interconnection service to another telecommunications provider.

Amendment of agreement.

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

- (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) Notwithstanding any provision of the agreement, no interconnection provider shall terminate an interconnection agreement for breach of that agreement unless-

- (a) the interconnection provider has given the interconnecting operator a written notice stating the breach, and providing for a period of not less than 3 months during which time the breach may be cured;
- (b) the interconnecting operator has failed to remedy the breach within the notice period; and
- (c) if the services provided under the Agreement are essential services, the Commission, after due notice, has consented to the termination (provided that, in the case of an interconnection agreement that provides both essential and other services, only termination with respect to those essential services shall be so restricted).

Procedures for application.

20. (1) The parties shall submit a written application of a proposed interconnection agreement to the Commission at least 30 working days prior to the proposed effective date of the agreement.

(2) The Commission shall approve the proposed inter-connection agreement if it is satisfied that the proposed interconnection agreement is consistent with:

- (a) any reference interconnection offer in force;
- (b) where no reference interconnection offer is in force, the principles of interconnection set out in Regulation 6 of these Regulations.

(3) The Commission shall consult with ECTEL for its advice and recommendations concerning the application, before determining whether to approve the proposed inter-connection 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) If the Commission notifies the parties that it does not consider that the proposed interconnection agreement is consistent with the principles set out in regulation 6 of these Regulations, the interconnection provider and the inter-connecting operator shall negotiate and submit a revised proposed interconnection agreement to the Commission within 15 days.

(6) Where the Commission does not request additional information or modifications, or rule on the agreement within 30 days of receiving an application for the approval or renewal of the agreement (or 15 days, in the case of an agreement revised in accordance with paragraph 5), the Commission shall approve the agreement.

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

- (a) the law prohibits the interconnection;

Interconnection not permitted.

- (b) the interconnection would endanger life or safety, or damage the property or impair the quality of the services of the party providing the interconnection;
- (c) the licence issued to the party from whom the interconnection is requested, exempts it from the obligation to interconnect;
- (d) the licence issued to the party requesting interconnection does not authorise the telecommunications services for which interconnection is requested;
- (e) the requested interconnection is not technically feasible; or
- (f) the proposed interconnection is contrary to the law or the public interest.

Renewal of agree-
ment.

22. A licensee shall file with the Commission an application for approval of the renewal or extension of an existing interconnection agreement at least 30 days before the effective date of the 5th anniversary of that agreement, and on each successive 5th anniversary.

Register.

23. (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 prescribed by the Commission.

(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.

Contents of register.

24. The Register shall be maintained in 3 parts -

- (a) Part I containing a list of all inter-connection 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;

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- (b) Part II containing portions of inter-connection agreements which the Commission has directed to be kept confidential; and
 - (c) Part III containing the contents of inter-connection agreements excluding those directed by the Commission to be kept confidential which shall be open for inspection by the public.

25. (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 the relevant part were not kept confidential, it may direct that the relevant part of the interconnection agreement be kept confidential. 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 inter-connection 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 not to keep any information confidential (including to disclose any 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.

26. (1) The Commission may, from time to time, prescribe 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.

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

Access to register.

27. (1) Parts I and III of the Register shall be open for inspection by the public on payment of the prescribed fee and on the fulfilment of any other condition prescribed by the Commission.

(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 also allow access to Parts I and III of the Register through the website maintained by it in accordance with subregulations (1) and (2).

Dispute resolution.

28. (1) Where an interconnection provider and an interconnecting operator are unable, after having negotiated in good faith for a reasonable period, to agree the terms and conditions of

an interconnection agreement, either party may request the assistance of the Commission in resolving the dispute.

(2) The Commission, in responding to a request for assistance, may choose to take one or more of the following actions -

- (a) act as arbitrator of that dispute; or
- (b) appoint a mediator to that dispute; or
- (c) direct the parties to commence or continue inter-connection negotiations.

(3) Where the Commission appoints a mediator, it may direct that payment of the mediator's reasonable costs and expenses are paid for by the relevant parties to the dispute.

(4) Where the parties cannot agree on a date upon which to commence negotiations, the Commission shall be empowered to compel both parties to commence negotiations by a prescribed date.

(5) The Commission may, if requested by either party, set a time limit within which negotiations on interconnection are to be completed. Any such direction shall set out the steps to be taken if agreement is not reached within the time limit.

29. (1) The complaining party shall submit to the Commission a clear and reasoned statement of the issues in dispute, as well as any issues on which there is agreement.

Role of parties to dispute.

(2) The opposing party shall respond to the complaint within 30 days and shall state the reasons for its position including any statutory or regulatory justification for that position.

30. (1) When a complaint has been referred to the Commission it shall take steps to resolve the dispute -

Fairness in dispute resolution.

- (a) as promptly as practicable, having regard to the matters in dispute;

- (b) preserving any agreements between the parties over issues that are not in dispute; and
- (c) consistent with regulation 2 below.

(2) When acting as an arbitrator, the Commission or ECTEL shall attempt to achieve a fair balance between the legitimate interests of the parties to the dispute, and have regard to the following factors (which does not limit that factors that may be considered):

- (a) whether the proposed ruling promote the long-term interests of consumers of telecommunications services in Dominica;
- (b) the interests of persons who have rights to use the telecommunications networks concerned;
- (c) the economically efficient operation of a telecommunications network or the provision of a telecommunications service.

Disconnection of networks.

31. (1) Any dispute between parties of an interconnection agreement shall not cause the partial or total disconnection of the relevant network except in accordance with regulation 17 above.

(2) Notwithstanding subregulation (1), the Commission may decide that partial or total disconnection is necessary and so advise the parties.

(3) Whenever the Commission takes action in accordance with subregulation (2), it shall recommend and instruct that preliminary measures are applied to minimise any negative effects on the users of one or both networks.

Guidelines for resolving dispute.

32. In exercising its duties under regulation 30, the Commission shall take into account the:

- (a) availability of technically and commercially viable alternatives to the interconnection requested;

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- (b) desirability of providing users with a wide range of telecommunications services;
 - (c) interests of the users;
 - (d) nature of the request in relation to the resources available to meet the request;
 - (e) need to maintain a universal service;
 - (f) need to maintain the integrity of the public telecommunications network and the interoperability of services;
 - (g) promotion of competition;
 - (h) public interest;
 - (i) regulatory obligations or constraints imposed on any of the parties; and
 - (j) any other relevant and appropriate consideration.

33. A telecommunications provider when requested, is obliged to provide infrastructure sharing arrangements to another telecommunication provider, except where such arrangements -

Infrastructure sharing.

- (a) are illegal or incompatible with the obligations of the telecommunications provider, under the relevant licence, Act or Regulations;
- (b) are not technically feasible;
- (c) create health or safety problems;
- (d) require space that is unavailable; or
- (e) pose an unreasonable risk to the integrity or security of the network or services of the telecommunications provider, from which the sharing arrangement is requested.

Intervention by
Commission.

34. (1) The Commission may intervene to resolve a dispute concerning infrastructure sharing co-location at the request of either party and the Commission may take into account the matters listed in regulation 33.

(2) Where the Commission intervenes, it shall exercise those powers, and apply those principles, as set out in the Act and these Regulations for the resolution of disputes with respect to interconnection.

(3) The decision of the Commission shall be notified to the parties and published in the *Gazette*.

Procedure for
approval.

35. (1) A telecommunications provider who intends to install or construct a telecommunications facility on public property, shall submit a copy of the request for approval to the Commission and any relevant Authority having jurisdiction over the property concerned.

(2) The document referred to in subregulation (1) shall be accompanied by a certificate and notarised copies of the necessary approvals or permits from the relevant Government Department or other Agencies dealing with environmental and other relevant matters.

(3) The certificate referred to in subregulation (2) shall contain a statement declaring -

- (a) any existing licence and/or frequency authorisation pursuant to which permission to operate the proposed facility has previously been granted by the Commission;
- (b) the extent of any facility-sharing, co-location or other agreements pertaining to the proposed telecommunications facility;
- (c) the extent of the construction required;
- (d) the estimated length of the construction period;

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- (e) the nature and purpose of the proposed telecommunications facility; and
- (f) the technical specifications of the proposed facility.

Made this 27th day of March, 2002.

REGINALD AUSTRIE
*Minister for Communications,
Works and Housing.*

DOMINICA

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