

Chapter Thirteen

Telecommunications

Article 13.1: Scope and Coverage

1. This Chapter applies to:
 - (a) measures adopted or maintained by a Party relating to access to and use of the public telecommunications network and services;
 - (b) measures adopted or maintained by a Party relating to obligations of major suppliers of public telecommunications services;
 - (c) measures adopted or maintained by a Party relating to the provision of information services; and
 - (d) other measures relating to public telecommunication networks or services.
2. Except to ensure that enterprises operating broadcast stations and cable systems have continued access to and use of public telecommunications networks and services, this Chapter does not apply to any measure adopted or maintained by a Party relating to cable or broadcast distribution of radio or television programming.
3. Nothing in this Chapter shall be construed to:
 - (a) require a Party or require a Party to compel any enterprise to establish, construct, acquire, lease, operate, or provide telecommunications networks or telecommunications services, where such networks or services are not offered to the public generally;
 - (b) require a Party to compel any enterprise exclusively engaged in the cable or broadcast distribution of radio or television programming to make available its cable or broadcast facilities as a public telecommunications network; or
 - (c) prevent a Party from prohibiting persons operating private networks from using their networks to provide public telecommunications networks or services to third persons.

Article 13.2: Access to and Use of Public Telecommunications Networks and Services¹

1. Each Party shall ensure that enterprises of the other Party have access to and use of any public telecommunications service, including leased circuits, offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions, including as set out in paragraphs 2 through 6.

2. Each Party shall ensure that such enterprises are permitted to:

- (a) purchase or lease, and attach terminal or other equipment that interfaces with the public telecommunications network;
- (b) provide services to individual or multiple end-users over any leased or owned circuit(s);
- (c) connect owned or leased circuits with public telecommunications networks and services in the territory, or across the borders, of that Party or with circuits leased or owned by another person;
- (d) perform switching, signaling, processing, and conversion functions; and
- (e) use operating protocols of their choice.

3. Each Party shall ensure that enterprises of the other Party may use public telecommunications services for the movement of information in its territory or across its borders and for access to information contained in databases or otherwise stored in machine-readable form in the territory of either Party.

4. Further to Article 23.1 (General Exceptions) and notwithstanding paragraph 3, a Party may take such measures as are necessary to:

- (a) ensure the security and confidentiality of messages; or
- (b) protect the privacy of non-public personal data of subscribers to public telecommunications services,

subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or disguised restriction on

¹ For greater certainty, access to unbundled network elements, including access to leased circuits as an unbundled network element, is addressed in Article 13.4(3).

trade in services.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks or services, other than that necessary to:

- (a) safeguard the public service responsibilities of providers of public telecommunications networks or services, in particular their ability to make their networks or services available to the public generally; or
- (b) protect the technical integrity of public telecommunications networks or services.

6. Provided that conditions for access to and use of public telecommunications networks or services satisfy the criteria set out in paragraph 5, such conditions may include:

- (a) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks or services; and
- (b) a licensing, permit, registration, or notification procedure which, if adopted or maintained, is transparent and applications filed thereunder are processed expeditiously.

Article 13.3: Obligations Relating to Interconnection with Suppliers of Public Telecommunications Services

1. Each Party shall ensure that suppliers of public telecommunications services in its territory provide, directly or indirectly, interconnection with the suppliers of public telecommunications services of the other Party.

2. In carrying out paragraph 1, each Party shall ensure, in accordance with its domestic law and regulations, that suppliers of public telecommunications services in its territory take reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end-users of public telecommunications services and only use such information for the purpose of providing those services.

Article 13.4: Additional Obligations Relating to Conduct of Major Suppliers of Public Telecommunications Services²

Treatment by Major Suppliers

1. Subject to Annex 13.4(1), each Party shall ensure that major suppliers in its territory accord suppliers of public telecommunications services of the other Party non-discriminatory treatment regarding:

- (a) the availability, provisioning, rates, or quality of like public telecommunications services; and
- (b) the availability of technical interfaces necessary for interconnection.

Competitive Safeguards

2. (a) Each Party shall maintain appropriate measures for the purpose of preventing suppliers who, alone or together, are a major supplier in its territory from engaging in or continuing anti-competitive practices.
- (b) For purposes of subparagraph (a), examples of anti-competitive practices include:
- (i) engaging in anti-competitive cross-subsidization;
 - (ii) using information obtained from competitors with anti-competitive results; and
 - (iii) not making available, on a timely basis, to suppliers of public telecommunications services, technical information about essential facilities and commercially relevant information which are necessary for them to provide public telecommunications services.

Unbundling of Network Elements

3. (a) Each Party shall provide its competent body the authority to require that major suppliers in its territory provide suppliers of public telecommunications

² For purposes of this Agreement, this Article does not apply to suppliers of commercial mobile services. Nothing in this Agreement shall be construed to preclude an authority from imposing measures set forth in this Article upon suppliers of commercial mobile services.

services of the other Party access to network elements on an unbundled basis for the supply of those services on terms and conditions and at cost-oriented rates that are reasonable and non-discriminatory.

- (b) Which network elements will be required to be made available in its territory, and which suppliers may obtain such elements, will be determined in accordance with national law and regulation(s).
- (c) In determining the network elements to be made available, each Party's competent body shall consider, at a minimum, in accordance with national law and regulation:
 - (i) whether access to such network elements as are proprietary in nature is necessary, and whether the failure to provide access to such network elements would impair the ability of suppliers of public telecommunications services of the other Party to provide the services they seek to offer; or
 - (ii) other factors as established in national law or regulation,as that body construes these factors.

Co-Location

- 4. (a) Each Party shall ensure that major suppliers in its territory provide to suppliers of public telecommunications services of the other Party physical co-location of equipment necessary for interconnection or access to unbundled network elements on terms, conditions, and at cost-oriented rates that are reasonable and non-discriminatory.
- (b) Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall ensure that major suppliers in its territory provide:
 - (i) alternative solutions; or
 - (ii) facilitate virtual co-location,on terms, conditions, and at cost-oriented rates that are reasonable and non-discriminatory.

- (c) Each Party may determine which premises shall be subject to subparagraphs (a) and (b).

Resale

- 5. Each Party shall ensure that major suppliers in its territory:
 - (a) offer for resale, at reasonable rates,³ to suppliers of public telecommunications services of the other Party, public telecommunications services that such major supplier provides at retail to end users that are not suppliers of public telecommunications services; and
 - (b) subject to Annex 13.4(5)(b), do not impose unreasonable or discriminatory conditions or limitations on the resale of such services.

Number Portability

- 6. Each Party shall ensure that major suppliers in its territory provide number portability to the extent technically feasible, on a timely basis, and on reasonable terms and conditions.

Dialing Parity

- 7. Each Party shall ensure that major suppliers in its territory provide dialing parity to suppliers of public telecommunications services of the other Party and afford suppliers of public telecommunications services of the other Party non-discriminatory access to telephone numbers and related services with no unreasonable dialing delays.

Interconnection

- 8. (a) General Terms and Conditions

Each Party shall ensure that major suppliers in its territory provide interconnection for the facilities and equipment of suppliers of public telecommunications services of the other Party:

- (i) at any technically feasible point in the major supplier's network;

³ The standard of reasonableness in this paragraph is satisfied, among others, by wholesale rates or cost-oriented rates set pursuant to domestic law and regulations.

- (ii) under non-discriminatory terms, conditions (including technical standards and specifications), and rates;
- (iii) of a quality no less favorable than that provided by such major supplier for its own like services, or for like services of non-affiliated service suppliers or for like services of its subsidiaries or other affiliates;
- (iv) in a timely fashion, on terms, conditions (including technical standards and specifications), and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and
- (v) on request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

(b) Options for Interconnecting with Major Suppliers

Each Party shall ensure that suppliers of public telecommunications services of the other Party may interconnect their facilities and equipment with those of major suppliers in its territory pursuant to at least one of the following options:

- (i) a reference interconnection offer or other standard interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications services; or
- (ii) the terms and conditions of an existing interconnection agreement or through negotiation of a new interconnection agreement.

(c) Public Availability of Interconnection Offers

Each Party shall require each major supplier in its territory to make publicly available a reference interconnection offer or other standard interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications services.

(d) Public Availability of the Procedures for Interconnection

Each Party shall make publicly available the applicable procedures for interconnection negotiations with major suppliers in its territory.

(e) Public Availability of Interconnection Agreements with Major Suppliers

Each Party shall:

- (i) require major suppliers in its territory to file all interconnection agreements to which they are party with its telecommunications regulatory body, and
- (ii) make publicly available interconnection agreements in force between major suppliers in its territory and other suppliers of public telecommunications services in such territory.

*Leased Circuits Services*⁴

- 9. (a) Each Party shall ensure that major suppliers in its territory provide enterprises of the other Party leased circuits services that are public telecommunications services, on terms, conditions, and at rates that are reasonable and non-discriminatory.
- (b) In carrying out subparagraph (a), each Party shall provide its telecommunications regulatory body the authority to require major suppliers in its territory to offer leased circuits that are part of the public telecommunications services to enterprises of the other Party at flat-rate prices that are cost-oriented.

Article 13.5: Submarine Cable Systems

- 1. Each Party shall ensure that enterprises in its territory that operate submarine cable systems accord non-discriminatory treatment for access to submarine cable systems.
- 2. Whether to apply paragraph 1 may be based on classification by a Party of such submarine cable system within its territory as a public telecommunications service supplier.

⁴ For greater certainty, access to unbundled network elements, including access to leased circuits as an unbundled network element, is addressed in Article 13.4(3).

Article 13.6: Conditions for Supplying Information Services

1. Neither Party may require an enterprise in its territory that it classifies as a supplier of information services (which supplies such services over facilities that it does not own) to:
 - (a) supply those services to the public generally;
 - (b) cost-justify its rates for such services;
 - (c) file a tariff for such services;
 - (d) interconnect its networks with any particular customer for the supply of such services; or
 - (e) conform with any particular standard or technical regulation for interconnection for the supply of such services other than for interconnection to a public telecommunications network.

2. Notwithstanding paragraph 1, a Party may take appropriate action, including any of the actions described in paragraph 1, to remedy a practice of an information services supplier that the Party has found in a particular case to be anti-competitive under its law or regulation(s), or to otherwise promote competition or safeguard the interests of consumers.

Article 13.7: Independent Telecommunications Regulatory Bodies

1. Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of public telecommunications services. To this end, each Party shall ensure that its telecommunications regulatory body does not hold a financial interest or maintain an operating role in any such supplier.

2. Each Party shall ensure that the decisions and procedures of its telecommunications regulatory body are impartial with respect to all interested persons. To this end, each Party shall ensure that any financial interest that it holds in a supplier of public telecommunications services does not influence the decisions and procedures of its telecommunications regulatory body.

Article 13.8: Universal Service

Each Party shall administer any universal service obligation that it maintains or adopts in a transparent, non-discriminatory, and competitively neutral manner and shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined.

Article 13.9: Licensing Procedures

1. When a Party requires a supplier of public telecommunications services to have a license, the Party shall make publicly available:
 - (a) the licensing criteria and procedures it applies, and the time it normally requires to act on an application, for issuing a license; and
 - (b) the terms and conditions of all licenses it has issued.
2. Each Party shall ensure that, upon request, an applicant receives the reasons for the denial of a license.

Article 13.10: Allocation and Use of Scarce Resources

1. Each Party shall administer its procedures for allocating and using scarce telecommunications resources, including frequencies, numbers, and rights of way, in an objective, timely, transparent, and non-discriminatory manner.
2. Each Party shall make publicly available the current state of allocated frequency bands but shall not be required to provide detailed identification of frequencies allocated for specific uses.
3. Decisions on allocating and assigning spectrum and frequency management are not measures that are inconsistent with Article 11.4 (Market Access), which is applied to Chapter Ten (Investment) through Article 11.1(3) (Scope and Coverage). Accordingly, each Party retains the right to exercise its spectrum and frequency management policies, which may affect the number of suppliers of public telecommunications services, provided that this is done in a manner that is consistent with the provisions of this Agreement. The Parties also retain the right to allocate frequency bands taking into account existing and future needs.

Article 13.11: Enforcement

Each Party shall ensure that its competent authority is authorized to enforce domestic measures relating to the obligations set out in Articles 13.2 through 13.5. Such authority shall include the ability to impose effective sanctions, which may include financial penalties, injunctive relief (on an interim or final basis), or the modification, suspension, and revocation of licenses.

Article 13.12: Procedures for Resolving Domestic Telecommunications Disputes

Further to Articles 20.4 (Administrative Proceedings) and 20.5 (Review and Appeal), each Party shall ensure the following:

Recourse to Telecommunications Regulatory Bodies

- (a) (i) Each Party shall ensure that enterprises of the other Party may have recourse to a national telecommunications regulatory body or other relevant body to resolve disputes arising under domestic measures addressing a matter set out in Articles 13.2 through 13.5.
- (ii) Each Party shall ensure that suppliers of public telecommunications services of the other Party that have requested interconnection with a major supplier in its territory may have recourse, within a reasonable and publicly available period of time after the supplier requests interconnection, to a national telecommunications regulatory body or other relevant body to resolve disputes regarding the terms, conditions, and rates for interconnection with such major supplier.

Reconsideration

- (b) Each Party shall ensure that an enterprise that is aggrieved or whose interests are adversely affected by a determination or decision of a national telecommunications regulatory body or other relevant body may petition the body to reconsider its determination or decision. Neither Party may permit such a petition to constitute grounds for non-compliance with such determination or decision of the telecommunications regulatory body or other relevant body unless an appropriate authority stays such determination or decision.

Judicial Review

- (c) Each Party shall ensure that any enterprise aggrieved by a determination or decision of the national telecommunications regulatory body or other relevant body may obtain judicial review of such determination or decision by an impartial and independent judicial authority.

Article 13.13: Transparency

Further to Article 20.2 (Publication), each Party shall make publicly available its measures relating to access to and use of public telecommunications services including its

measures relating to:

- (a) tariffs and other terms and conditions of service;
- (b) specifications for technical interfaces;
- (c) bodies responsible for preparing, amending, and adopting standards-related measures affecting access and use;
- (d) conditions for attaching terminal or other equipment to the public telecommunications network; and
- (e) notification, permit, registration, or licensing requirements, if any.

Article 13.14: Flexibility in the Choice of Technologies

Each Party shall endeavor to not prevent suppliers of public telecommunications services from having the flexibility to choose the technologies that they use to supply their services, including commercial mobile wireless services.

Article 13.15: Forbearance

The Parties recognize the importance of relying on market forces to achieve wide choices in the supply of telecommunications services. To this end, where provided for under domestic law, each Party may forbear from applying regulation to a telecommunication service that the Party classifies as a public telecommunications service if its telecommunications regulatory body determines that:

- (a) enforcement of such regulation is not necessary to prevent unreasonable or discriminatory practices;
- (b) enforcement of such regulation is not necessary for the protection of consumers; and
- (c) forbearance is consistent with the public interest, including promoting and enhancing competition among suppliers of public telecommunications services.

Article 13.16: Relationship to Other Chapters

In the event of any inconsistency between this Chapter and another Chapter, this Chapter shall prevail to the extent of the inconsistency.

Article 13.17: Definitions

For purposes of this Chapter:

commercial mobile services means public telecommunications services supplied through mobile wireless means;

cost-oriented means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;

dialing parity means the ability of a subscriber to use of an equal number of digits to access a public telecommunications service, regardless of the public telecommunications services supplier chosen by such end-user;

enterprise means an “enterprise” as defined in Article 2.1 (Definitions of General Application) and includes a branch of an enterprise;

end-user means a final consumer of or subscriber to a public telecommunications service, including any service supplier other than a supplier of public telecommunications services;

essential facilities means facilities of a public telecommunications network or service that:

- (a) are exclusively or predominantly provided by a single or limited number of suppliers, and
- (b) cannot feasibly be economically or technically substituted in order to provide a service;

information service means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service;

interconnection means linking with suppliers providing public telecommunications services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;

leased circuit means telecommunications facilities between two or more designated points that are made available solely to, or dedicated exclusively for use by, a particular customer or other users of the customer’s choosing;

major supplier means a supplier of public telecommunications services that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for public telecommunications services as a result of:

- (a) control over essential facilities; or
- (b) use of its position in the market;

network element means a facility or equipment used in supplying a public telecommunications service, including features, functions, and capabilities provided by means of such facility or equipment;

non-discriminatory means treatment no less favorable than that accorded to any other user of like public telecommunications services in like circumstances;

number portability means the ability of end-users of public telecommunications services to retain, at the same location, existing telephone numbers without impairment of quality, reliability, or convenience when switching like suppliers of public telecommunications services;

physical co-location means physical access to and control over space in order to install, maintain, or repair equipment, at premises owned or controlled and used by a major supplier to provide public telecommunications services;

private network means a telecommunications network that is used exclusively for intraenterprise communications;

public telecommunications network means telecommunications infrastructure which a Party requires to provide public telecommunications services between defined network termination points;

public telecommunications service means any telecommunications service which a Party requires, explicitly or in effect, to be offered to the public generally. Such services may include, *inter alia*, telephone and data transmission typically involving customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information, but does not include the offering of information services;

reference interconnection offer means an interconnection offer that a major supplier extends and that is filed with or approved by a telecommunications regulatory body and that is sufficiently detailed to enable a supplier of public telecommunications services that is

willing to accept its rates, terms, and conditions to obtain interconnection without having to engage in negotiations with the major supplier concerned;

telecommunications means the transmission and reception of signals by any electromagnetic means, including by photonic means;

telecommunications regulatory body means a body responsible for the regulation of telecommunications; and

user means an end-user or a supplier of public telecommunications services.

Annex 13.4(1)

Article 13.4 does not apply to rural telephone companies, as defined in section 3(37) of the Communications Act of 1996, unless a state regulatory authority orders otherwise. Moreover, a state regulatory authority may exempt a rural local exchange carrier, as defined in section 251(f)(2) of the Communications Act of 1996, from the obligations contained in Article 13.4.

Annex 13.4(5)(b)

In the United States, a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers may be prohibited from offering such service to a different category of subscribers.