

## **Chapter Fourteen**

### **Telecommunications**

#### **Article 14.1: Scope and Coverage**

1. This Chapter applies to:
  - (a) measures relating to access to and use of public telecommunications services;
  - (b) measures relating to obligations of suppliers of public telecommunications services;
  - (c) other measures relating to public telecommunications networks or services; and
  - (d) measures relating to the supply of information services.
2. Except to ensure that enterprises operating broadcast stations and cable systems have continued access to and use of public telecommunications services, as set out in Article 14.2, this Chapter does not apply to any measure relating to broadcast or cable 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 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 broadcast or cable distribution of radio or television programming to make available its broadcast or cable facilities as a public telecommunications network; or
  - (c) prevent a Party from prohibiting persons operating private networks from using their networks to supply public telecommunications networks or services to third persons.

#### **Article 14.2: Access to and Use of Public Telecommunications Services<sup>1</sup>**

1. Each Party shall ensure that enterprises of another Party have access to and use of any public telecommunications service, including leased circuits, offered in its territory or across its

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<sup>1</sup> For greater certainty, this Article does not prohibit any Party from requiring an enterprise to obtain a license, concession, or other type of authorization to supply any public telecommunications service within its territory.

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 a public telecommunications network;
  - (b) provide services to individual or multiple end-users over leased or owned circuits;
  - (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 another 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 any Party.

4. 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,

provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or disguised restriction on 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 suppliers 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 and services;
- (b) type approval of terminal or other equipment that interfaces with the network and technical requirements relating to the attachment of such equipment to such networks; and
- (c) a licensing, permit, registration, or notification procedure which, if adopted or maintained, is transparent and provides for the processing of applications filed thereunder in accordance with the Party's national law or regulation.

### **Article 14.3: Obligations Relating to Suppliers of Public Telecommunications Services<sup>2</sup>**

#### *Interconnection*

1. (a) 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 another Party at reasonable rates.
- (b) In carrying out subparagraph (a), each Party shall ensure 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 obtained as a result of interconnection arrangements and only use such information for the purpose of providing those services.

#### *Resale*

2. Each Party shall ensure that suppliers of public telecommunications services do not impose unreasonable or discriminatory conditions or limitations on the resale of those services.

#### *Number Portability*

3. Each Party shall ensure that suppliers of public telecommunications services in its territory provide number portability to the extent technically feasible, on a timely basis, and on reasonable terms and conditions.<sup>3</sup>

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<sup>2</sup> This Article is subject to Annex 14-A. Paragraphs 2 through 4 of this Article do not apply with respect to suppliers of commercial mobile services. This exclusion shall not be construed to preclude a Party from imposing the requirements set forth in this Article on suppliers of commercial mobile services.

<sup>3</sup> In complying with this paragraph, any Party other than the United States may take into account the economic feasibility of providing number portability.

### *Dialing Parity*

4. Each Party shall ensure that suppliers of a particular public telecommunications service in its territory provide dialing parity to suppliers of the same public telecommunications service of the other Party and provide suppliers of public telecommunications services of the other Party non-discriminatory access to telephone numbers, directory assistance, directory listing, and operator services with no unreasonable dialing delays.

### **Article 14.4: Additional Obligations Relating to Major Suppliers of Public Telecommunications Services<sup>4</sup>**

#### *Treatment by Major Suppliers*

1. Each Party shall ensure that major suppliers in its territory accord suppliers of public telecommunications services of another Party treatment no less favorable than such major suppliers accord to their subsidiaries, their affiliates, or non-affiliated service suppliers 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 that, alone or together, are a major supplier in its territory from engaging in or continuing anti-competitive practices.
- (b) The anti-competitive practices referred to in subparagraph (a) include in particular:
  - (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

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<sup>4</sup> This Article is subject to Annex 14-A. Paragraph 1, subparagraph (2)(b)(iii), and paragraphs 3 through 8 of this Article do not apply with respect to major suppliers of commercial mobile services. This exclusion is without prejudice to any rights or obligations that a Party may have under the GATS and shall not be construed to preclude a Party from imposing the requirements set out in this Article on major suppliers of commercial mobile services.

facilities and commercially relevant information that are necessary for them to provide public telecommunications services.

### *Resale*

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

### *Unbundling of Network Elements*

4.
  - (a) Each Party shall provide its telecommunications regulatory body or other relevant body the authority to require major suppliers in its territory to offer access to network elements on an unbundled basis on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent for the supply of public telecommunications services.
  - (b) Each Party may determine the network elements required to be made available in its territory, and the suppliers that may obtain such elements, in accordance with its law or regulations.

### *Interconnection*

5.
  - (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 another Party:

- (i) at any technically feasible point in the major suppliers' networks;
- (ii) under non-discriminatory terms, conditions (including technical standards and specifications), and rates;

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<sup>5</sup> Where provided in its law or regulations, a Party may prohibit a reseller that obtains, at wholesale rates, a public telecommunications service available at retail to only a limited category of subscribers from offering the service to a different category of subscribers.

- (iii) of a quality no less favorable than that provided by such major suppliers for their own like services, for like services of non-affiliated service suppliers, or for their 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 suppliers need not pay for network components or facilities that they do 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 another 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 another standard interconnection offer containing the rates, terms, and conditions that the major suppliers offer generally to suppliers of public telecommunications services;
- (ii) the terms and conditions of an interconnection agreement in force; or
- (iii) through negotiation of a new interconnection agreement.

(c) Public Availability of Interconnection Offers

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

(d) Public Availability of Procedures for Interconnection Negotiations

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

(e) Public Availability of Interconnection Agreements Concluded with Major Suppliers

- (i) Each Party shall require major suppliers in its territory to file all interconnection agreements to which they are party with its telecommunications regulatory body.<sup>6</sup>
- (ii) Each Party shall make publicly available interconnection agreements in force between major suppliers in its territory and other suppliers of public telecommunications services in its territory.

#### *Provisioning and Pricing of Leased Circuits Services*

- 6. (a) Each Party shall ensure that major suppliers in its territory provide enterprises of another Party leased circuits services that are public telecommunications services on terms and 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 services that are public telecommunications services to enterprises of another Party at capacity-based, cost-oriented prices.

#### *Co-location*

- 7. (a) Subject to subparagraphs (b) and (c), each Party shall ensure that major suppliers in its territory provide to suppliers of public telecommunications services of another Party physical co-location of equipment necessary for interconnection on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent.
- (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 an alternative solution, such as facilitating virtual co-location, on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent.
- (c) Each Party may specify in its law or regulations which premises are subject to subparagraphs (a) and (b).

#### *Access to Poles, Ducts, Conduits, and Rights-of-way*

- 8. Each Party shall ensure that major suppliers in its territory afford access to poles, ducts, conduits, and rights-of-way owned or controlled by such major suppliers to suppliers of public telecommunications services of another Party on terms and conditions, and at rates, that are reasonable and non-discriminatory.

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<sup>6</sup> In the United States, this obligation may be satisfied by requiring filing with a regulatory authority at the regional level.

### **Article 14.5: Submarine Cable Systems**

Each Party shall ensure that any enterprise that it authorizes to operate a submarine cable system in its territory as a public telecommunications service accords reasonable and non-discriminatory treatment with respect to access to that system (including landing facilities) to suppliers of public telecommunications services of another Party.

### **Article 14.6: Conditions for the Supply of Information Services**

1. No Party may require an enterprise in its territory that it classifies as a supplier of information services<sup>7</sup> and that supplies those services over facilities that it does not own to:
  - (a) supply those services to the public generally;
  - (b) cost-justify its rates for those services;
  - (c) file a tariff for those services;
  - (d) connect with any particular customer for the supply of those services; or
  - (e) conform with any particular standard or technical regulation for connecting to any network, other than a public telecommunications network.
2. Notwithstanding paragraph 1, a Party may take the actions described in subparagraphs (a) through (e) to remedy a practice of a supplier of information services that the Party has found in a particular case to be anti-competitive under its law or regulations, or to otherwise promote competition or safeguard the interests of consumers.

### **Article 14.7: Independent Regulatory Bodies and Government-owned Telecommunications Suppliers**

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.

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<sup>7</sup> For purposes of applying this Article, each Party may classify which services in its territory are information services.



3. No Party may accord more favorable treatment to a supplier of public telecommunications services or to a supplier of information services than that accorded to a like supplier of another Party on the basis that the supplier receiving more favorable treatment is owned, wholly or in part, by the central level of government of the Party.

#### **Article 14.8: Universal Service**

Each Party has the right to define the kind of universal service obligations it wishes to maintain and shall administer those obligations 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 14.9: Licenses and Other Authorizations**

1. Where a Party requires a supplier of public telecommunications services to have a license, concession, permit, registration, or other type of authorization, the Party shall make publicly available:

- (a) all applicable licensing or authorization criteria and procedures;
- (b) the time it normally requires to reach a decision concerning an application for a license, concession, permit, registration, or other type of authorization; and
- (c) the terms and conditions of all licenses or authorizations it has issued.

2. Each Party shall ensure that, on request, an applicant receives the reasons for the denial of a license, concession, permit, registration, or other type of authorization.

#### **Article 14.10: Allocation and Use of Scarce Resources**

1. Each Party shall administer its procedures for the allocation and use of 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 government uses.

3. A Party's measures allocating and assigning spectrum and managing frequencies are not measures that are *per se* inconsistent with Article 11.4 (Market Access), either as it applies to cross-border trade in services or, through the operation of Article 11.1.3 (Scope and Coverage), to a covered investment of another Party. Accordingly, each Party retains the right to establish and apply its spectrum and frequency management policies that may have the effect of limiting

the number of suppliers of public telecommunications services, provided that it does so in a manner that is consistent with other provisions of this Agreement. This includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.

4. When making a spectrum allocation for non-government telecommunications services, each Party shall endeavor to rely on an open and transparent public comment process that considers the overall public interest. Each Party shall endeavor to rely generally on market-based approaches in assigning spectrum for terrestrial non-government telecommunications services.

#### **Article 14.11: Enforcement**

Each Party shall provide its competent authority with the authority to enforce compliance with the Party's measures relating to the obligations set out in Articles 14.2 through 14.5. 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 or other authorizations.

#### **Article 14.12: Resolution of Telecommunications Disputes**

Further to Articles 19.4 (Administrative Proceedings) and 19.5 (Review and Appeal), each Party shall ensure the following:

##### *Recourse to Telecommunications Regulatory Bodies*

- (a) (i) Enterprises of another Party may seek review by a telecommunications regulatory body or other relevant body to resolve disputes regarding the Party's measures relating to a matter set out in Articles 14.2 through 14.5.
- (ii) Suppliers of public telecommunications services of another Party that have requested interconnection with a major supplier in the Party's territory may seek review, within a reasonable and publicly specified period after the supplier requests interconnection, by a telecommunications regulatory body<sup>8</sup> to resolve disputes regarding the terms, conditions, and rates for interconnection with such major supplier.

##### *Reconsideration*

- (b) Any enterprise that is aggrieved or whose interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may

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<sup>8</sup> The United States may comply with this obligation by providing for review by a regulatory authority at the regional level.

petition the body to reconsider<sup>9</sup> that determination or decision. No Party may permit such a petition to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body unless an appropriate authority stays such determination or decision.<sup>10</sup>

### *Judicial Review*

- (c) Any enterprise that is aggrieved or whose interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may obtain judicial review of such determination or decision by an independent judicial authority. An application for judicial review shall not constitute grounds for non-compliance with such a determination or decision unless stayed by the relevant judicial body.

### **Article 14.13: Transparency**

Further to Articles 19.2 (Publication) and 19.3 (Notification and Provision of Information), each Party shall ensure that:

- (a) rulemakings, including the basis for such rulemakings, of its telecommunications regulatory body and end-user tariffs filed with its telecommunications regulatory body are promptly published or otherwise made publicly available;
- (b) interested persons are provided, to the extent possible, with adequate advance public notice of, and the opportunity to comment on, any rulemaking that its telecommunications regulatory body proposes; and
- (c) its measures relating to public telecommunications services are made publicly available, including measures relating to:
  - (i) tariffs and other terms and conditions of service;
  - (ii) procedures relating to judicial and other adjudicatory proceedings;
  - (iii) specifications of technical interfaces;

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<sup>9</sup> With respect to the obligations of a Party other than the United States under this subparagraph, enterprises may not petition for reconsideration of rulings of general application, as defined in Article 19.6 (Definitions), unless provided for under its law and regulation.

<sup>10</sup> Notwithstanding this subparagraph, in Colombia, if a petition for reconsideration is filed, the determination or decision of the telecommunications regulatory body will not become effective pending the outcome of the reconsideration. Petitions for reconsideration shall be ruled upon promptly.

- (iv) bodies responsible for preparing, amending, and adopting standards-related measures affecting access and use;
- (v) conditions for attaching terminal or other equipment to the public telecommunications network; and
- (vi) notification, permit, registration, or licensing requirements, if any.

#### **Article 14.14: Flexibility in the Choice of Technologies**

No Party may 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, subject to requirements necessary to satisfy legitimate public policy interests.

#### **Article 14.15: Forbearance**

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

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

#### **Article 14.16: 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 14.17: Definitions**

For purposes of this Chapter:

**co-location (physical)** 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 supply public telecommunications services;

**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 an end-user to use an equal number of digits to access a particular public telecommunications service, regardless of the public telecommunications service supplier chosen by such end-user;

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

**enterprise** means an “enterprise” as defined in Article 1.3 (Definitions of General Application) and includes a branch of an enterprise;

**enterprise of another Party** means both an enterprise constituted or organized under the law of another Party and an enterprise owned or controlled by a person of another Party;

**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 supply 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 circuits** means telecommunications facilities between two or more designated points that are set aside for the dedicated use of or availability to 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, the same telephone numbers without impairment of quality, reliability, or convenience when switching between like suppliers of public telecommunications services;

**private network** means a telecommunications network that is used exclusively for intra-enterprise 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 that 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 information services;

**reference interconnection offer** means an interconnection offer extended by a major supplier and filed with or approved by a telecommunications regulatory body 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;

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

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

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

## **Annex 14-A**

### **Rural Telephone Suppliers - Colombia**

1. Colombia may designate and exempt a rural telephone company that has at least 80 percent of its total fixed subscriber lines in operation in rural areas from the obligations contained in paragraphs 2 through 4 of Article 14.3 and the obligations of Article 14.4. The total number of subscriber lines supplied by a rural telephone company includes all subscriber lines supplied by the company and by its owners, subsidiaries, and affiliates.
2. Colombia may exempt service suppliers that supply public telecommunications services in rural areas from the obligations contained in paragraphs 2 through 4 of Article 14.3 and from the obligations contained in paragraphs 3, 4, 6, and 7 of Article 14.4. Any exemption is applicable only with respect to the public telecommunications services supplied in rural areas.
3. For purposes of this Chapter, a rural area in Colombia is defined as a municipality with a total number of installed fixed lines of 4,500 or less.
4. The combined areas that Colombia designates as rural areas may not contain more than ten percent of the total number of fixed subscriber lines installed in its territory.
5. Nothing in this Annex shall be construed to preclude Colombia from imposing the requirements set out in Articles 14.3 and 14.4 on a rural telephone supplier.

### **Rural Telephone Suppliers – United States**

1. A regulatory authority at the regional level in the United States may exempt a rural local exchange carrier, as defined in section 251(f)(2) of the *Communications Act of 1934*, as amended, from the obligations contained in paragraphs 2 through 4 of Article 14.3 and from the obligations contained in Article 14.4.
2. Article 14.4 does not apply to the United States with respect to a rural telephone company, as defined in section 3(37) of the *Communications Act of 1934*, as amended, unless a regulatory authority at the regional level orders that the requirements described in that Article be applied to the company.