

M O N T S E R R A T

NO. 33 OF 2009

INFO-COMMUNICATIONS INTERCONNECTION REGULATIONS 2009

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MONTSERRAT
STATUTORY RULES AND ORDERS
NO. 33 OF 2009

INFO-COMMUNICATIONS INTERCONNECTION REGULATIONS 2009

THE INFO-COMMUNICATIONS INTERCONNECTION REGULATIONS 2009 MADE BY THE GOVERNOR IN COUNCIL UNDER SECTION 73 OF THE INFO-COMMUNICATIONS DEVELOPMENT ACT 2009.

PART I
PRELIMINARY

Short title and commencement

1. These Regulations may be cited as the Info-communications Interconnection Regulations, 2009 and shall come into force on 1st day of August, 2009.

Purpose/Objects

2. (1) These Regulations establish a body of legal obligations and directives that are fundamental to ensure and sustain any-to-any connectivity between different and competing info-communications networks and the seamless communication between the subscribers of the services delivered over those networks.

(2) These Regulations also seek to provide the legal certainties which are necessary to—

- (a) encourage investment in and efficient use of modern info-communications technologies;
- (b) guarantee technology neutral interoperability between networks;
- (c) assist the development and sustainability of a universal service funding regime;
- (d) protect end users' confidentiality; and
- (e) provide and maintain the availability of choice in info-communications service providers to the people of Montserrat.

Applicability of Regulations

3. The Regulations apply to all concessionaires requesting interconnection, or from whom interconnection services are requested, in accordance with section 24 of the Info-communications Development Act, 2009, (hereinafter referred to as "the Act").

Interpretation

4. In these Regulations—

“Authority” means the Info-Communications Authority established under section 4(1) of the Act;

"carrier pre-selection" means a form of equal access in which the customer selects a preferred service provider;

“Concessionaire” means a person or an entity authorized to operate a public info-communications network or provide a public info-communications service under section 21 of the Act;

- "efficient cost" means cost equivalent to that of the network or service provider whose combination of allocative, productive and dynamic cost are the most optimal in the market for any info-communications resource;
- "equal access" means a facility enabling a customer to choose in a transparent and equal manner between two or more competing service providers;
- "essential interconnection resource" means an interconnection resource for which no practical and viable alternative exists;
- "Incumbent Concessionaire" means any entity which was a monopoly network and/or service provider prior to the opening of the market for that network or service to any new network and/or service provider;
- "infrastructure provider" means a concessionaire which owns or operates an info-communications network and from which the use of infrastructure which forms part of his network is requested by a concessionaire;
- "Interconnect Agreement" means an agreement detailing arrangements as negotiated and agreed between parties to interconnect their networks in order to provide info-communication services in accordance with section 24(2)(e) of the Act, and which is binding on the signatory parties over the period of the Agreement;
- "interconnecting concessionaire" means the Concessionaire which is seeking interconnection services from another Concessionaire;
- "interconnection provider" means the Concessionaire which is providing interconnect services to an interconnecting concessionaire;
- "interconnection resource" means a component of a network or a combination of such components that is required for the provision of an interconnection service;
- "interconnection service" means a service provided by an Interconnection Provider to an interconnecting concessionaire including voice, data and image;
- "interconnect link" means a transmission path that connects a point of interconnection on an interconnection provider's network to a point on the interconnecting concessionaire's network;
- "Non-incumbent interconnection provider" means a Concessionaire other than the incumbent Concessionaire and from which an interconnection resource or an interconnection service is requested;
- "number portability" means a facility enabling a customer to port and retain the same telephone number when changing telephone service provider;
- "open access" means technology neutral access;
- "point of interconnection" means a point on the interconnection provider's network where physical connection is allowed to any interconnecting concessionaire and can serve as a gateway between networks to enable the exchange of info-communications services between or among networks so interconnected;
- "Reference Interconnect Offer (RIO)" means a document setting out the terms and conditions on which an interconnection provider proposes to offer interconnect resources to interconnecting concessionaires;
- "traffic origination" means an interconnection service which begins on one network at its termination point on a customer's premises and passed to a point of interconnection with another network for onward transmission;
- "traffic termination" means an interconnection service received at a point of interconnection to be terminated at a termination point on a customer's premises which is connected to the network that received the service;
- "transit traffic" means traffic that originates on one network and passes through another network to be terminated on a third network.

PART II
GENERAL OBLIGATIONS

Interconnect negotiations

5. All concessionaires shall—
- (a) have a right and, when requested, an obligation to negotiate interconnection with each other for the purpose of providing public info-communications resources;
 - (b) negotiate in good faith with each other matters concerning interconnection;
 - (c) neither withdraws nor impairs interconnection once already granted, unless authorized by the Authority, a dispute settlement arbitrator or a court of law;
 - (d) grant access to technical interfaces, protocols or any other technology for the interoperability of public network services.

Supply of information

6. (1) Upon request, a concessionaire shall supply to an interconnecting concessionaire such information about its network as is necessary and sufficient for the purposes of interconnection.

(2) The information referred to in sub-regulation (1) shall be supplied within twenty-eight (28) days except where the interconnection provider is granted an extension in writing by the Authority in response to a request submitted in writing at least seven (7) days before the deadline for supply of the information.

(3) A concessionaire seeking to have information pertaining to sub-regulation (1) classified as confidential shall so do in writing to the Authority not later than seven (7) days before the deadline for supply of the information and the Authority shall determine and communicate its decision regarding the request within a reasonable period which does not exceed fourteen (14) days, to the date the request was received.

(4) Information provided to facilitate interconnection shall only be used for that purpose and shall not be disclosed to third parties or used to compete against the party providing the information on any service delivered in the info-communications market.

Mandatory sharing of infrastructure

7. Save and except where it is not technically feasible, where environmental, health and safety problems will be created, or where unreasonable risk to the integrity and or security of the network of the Infrastructure provider is posed, infrastructure sharing arrangements to effect interconnection shall be mandatory on all concessionaires.

PART III
OBLIGATIONS ON INCUMBENT CONCESSIONAIRES

List of obligations

8. An incumbent concessionaire is obliged, upon request from an Interconnecting concessionaire to provide—
- (a) interconnect link capacity within its network and between its network and that of the Interconnecting concessionaire to enable transmission and switching/routing of multimedia services (voice, data, image etc) over their networks;
 - (b) operator services such as directory enquiries, and emergency services;
 - (c) resources and services that enable transmission of all signals over which permit the origination, transit and termination of traffic between networks on the condition that such signals do not compromise the integrity of services, delivered over its networks;

- (d) access to essential interconnection resources as the Authority may from time to time specify and such resources may include—
 - (i) Local and international switching /routing functions;
 - (ii) Operations Support Systems;
 - (iii) Databases;
 - (iv) Service Management Systems.

Power to amend list of obligations

9. The obligations listed in regulation 8 may be varied from time to time by the Authority.

Alternative interconnection arrangements

10. Where an Interconnecting concessionaire is denied access by an Incumbent interconnection provider to any Interconnection resource or service specified at regulation 8 and/or required under regulation 9 on the grounds that it is not technically feasible or would compromise network integrity, and such a claim has been authenticated by the Authority, the Authority may cause the Interconnection provider to make the necessary network adjustment to enable the required interconnection in a reasonable period.

PART IV**NON-DISCRIMINATION****Obligations on Incumbent Concessionaire**

11. (1) Interconnection providers are obliged to apply equivalent conditions in equivalent circumstances to Interconnecting concessionaires in providing any Interconnection resource or service under the same conditions and of the same quality as they provide for those of their subsidiaries or partners.

(2) Where an Interconnection provider fails to comply with sub-regulation (1) it must upon request from the Authority prove that it is not technically feasible to replicate the quality level of the Interconnection service or resource provided for its own use.

Applicability of precedents to non-discriminatory interconnection

12. (1) Previous supply of an interconnection service or access to an Interconnection resource at a particular point of interconnection is evidence of technically feasible interconnection at that point of interconnection, or at similar points on the network where similar resources are used or services provided.

(2) Adherence to the same interfaces or protocol standards at other points of interconnection shall constitute evidence of similar resources.

PART V**EQUAL ACCESS AND NUMBER PORTABILITY****Obligation to supply number ranges**

13. An Interconnection provider shall upon request from any Interconnecting concessionaire, supply details of number ranges that are hosted on its local exchange/server to enable Interconnecting concessionaires to route calls to those number ranges directly through the Interconnection link as required.

Obligations to facilitate dialing parity and carrier pre-selection

14. An Interconnection provider, upon a directive from the Authority shall—
- (a) configure its network to facilitate dialing parity in such a manner that provides subscribers with the option of using any available alternative service provider to make international calls whenever concessions are granted by the Authority to such service providers to provide international voice services;
 - (b) program its switches to enable carrier pre-selection for access to international telecommunications services.

Obligations to facilitate number portability

15. Each concessionaire shall configure its network to facilitate number portability between similar networks as and when directed by the Authority.

PART VI**INTERCONNECTION AGREEMENT AND REFERENCE INTERCONNECTION OFFER****Interconnection Agreement timelines**

16. Concessionaires shall use all reasonable endeavours to conclude any Interconnection agreement within sixty (60) days of the receipt of a request for interconnection from an Interconnecting concessionaire. Failure to do so shall constitute a dispute.

Compulsory Interconnection Agreement particulars

17. Interconnect agreements shall include—
- (i) prices and price adjustments for Interconnection resources and services including the initial level of interconnection charges, a definition of the currency in which interconnection charges are to be paid and how prices will adjust over the term of the Agreement to account for exchange rate changes and inflation;
 - (ii) definition of the traffic pertaining to any network as well as liability for technical, operational, billing, and planning conditions for exchange of traffic, bad debt and uncollectable bills;
 - (iii) the physical locations of interconnection points and specification of technical standards to be employed as well as the process for requesting and obtaining additional points of interconnection;
 - (iv) specifications regarding quality standards, in particular the time period for provisioning of circuits, call blocking levels as well as the applicable remedies when those standards are not met;
 - (v) definition of access to the parties' numbering resources, the time period for implementation of said access as well as the applicable terms to effect number portability where required;
 - (vi) the planning details to be followed by the interconnecting parties so that investment to procure additional capacity can be budgeted to facilitate timely installation;
 - (vii) the basic procedures to be adopted to resolve differences that may arise over forecasts of additional interconnection capacity; and
 - (viii) a mutual obligation to serve in a reasonable time advanced notification of intended network changes and upgrades.

Reference Interconnection Offer (RIO)

18. (1) Incumbent concessionaires shall prepare a Reference Interconnection Offer (RIO) that will serve as the basis for its interconnection agreements with interconnecting concessionaires.

(2) The RIO must be fully compliant with these Regulations.

(3) In addition, the Authority may issue an indicative specimen RIO in order to guide an Incumbent concessionaire on the expected content and format of its RIO.

Deadline for submission of RIO

19. An Incumbent concessionaire shall submit its RIO to the Authority within thirty five (35) days of the date of the first request for interconnection by any interconnecting concessionaire.

Obligation on concessionaire to publish RIO

20. An Incumbent concessionaires shall publish its RIO on its website within seven (7) days of submission to the Authority.

Non-incumbent Interconnection Agreement

21. An Interconnection Agreement prepared by any Non-incumbent interconnection provider and agreed to by an Interconnecting concessionaire requires the approval of the Authority prior to taking effect and becoming binding on the interconnecting concessionaire and the Authority shall not withhold approval without reason, and such reason must be given within twenty eight (28) days of submission of the Interconnection agreement to the Authority by the non-Incumbent interconnection provider.

Obligation, manner and timeline on the Authority to publish Interconnection Agreement

22. Any Interconnection agreement approved by the Authority shall be published by the Authority on its website within seven (7) days of the date of approval.

Freedom to negotiate Interconnection Agreement

23. There shall be no restrictions on any concessionaires engaged in negotiating the terms and conditions proposed in any Interconnection agreement.

PART VII**COMMERCIAL ARRANGEMENTS****Cost-efficient interconnection charges**

24. All interconnection charges shall be based on efficient costs.

Formula for sharing link costs

25. (1) The cost of an interconnection link shall be shared equally between the interconnecting concessionaire and the Interconnection provider.

(2) Where the Interconnection provider has underwritten the full expenditure to supply an Interconnection link, the liability in reference at sub-regulation (1) charged to the interconnecting concessionaire shall be based on the efficient costs of the link and shall, at a minimum, be separated into set-up costs and on-going leasing costs.

Authority and modalities for determining interconnection charges

26. (1) Interconnection charges shall be determined by such costing formats, methodologies, models or formulae as the Authority may from time to time approve or specify.

(2) The Authority may use at its discretion the costing formats, methodologies, models or formulae approved or specified at sub-regulation (1) to resolve interconnection disputes between concessionaires.

(3) Where the relevant data for the application of the costing formats, methodologies, models or formulae in reference at sub-regulation (1) are unavailable or not available within a reasonable time period, interconnection charges may be set by proxies derived from actual charges for similar interconnection services in countries where the characteristics used to determine those charges are similar to the essential determinants of interconnection costs in Montserrat.

(4) The approval of the Authority is required before proxy interconnection charges take effect and the Authority shall give its decision within twenty eight (28) days from the date the request for approval was received.

(5) Where approval is not granted as requested at sub-regulation (4) the Authority shall undertake its own benchmarking exercise and submit the charges so estimated to the parties for implementation and the charges shall be binding on the parties except overturned in a court of law.

Obligation to supply costing information

27. A concessionaire shall—

- (i) upon request, supply to the Authority data and analysis to demonstrate that its interconnection charges are based upon efficient costs;
- (ii) supply all data and analysis in reference at sub-regulation (1), within twenty-eight (28) days of the date of receipt of the request, save and except where a time extension is granted in writing by the Authority.

Symmetrical interconnection charges

28. (1) Save and except otherwise agreed between the parties, charges for similar interconnection services exchanged between similar networks, fixed network to fixed network or mobile network to mobile network etc, regardless of the technology which supports each network shall be symmetrical.

(2) A concessionaire shall not increase interconnection charges without the approval of the Authority.

(3) Where such approval referred to at sub-regulation (2) is given, the concessionaire is required to give a minimum of one month's notice before the new charges come into effect.

PART VIII
DISPUTE RESOLUTION

Dispute resolution process

29. Where a disagreement arises in respect of any interconnection matter under negotiation, either concessionaire may refer the matter to the Authority in accordance with any dispute resolution rules made pursuant to section 77 of the Act.

Made by the Governor in Council this 26th day of June, 2009.

J. Jeffers
Clerk of Councils

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