

MONTSERRAT
STATUTORY RULES AND ORDERS
S.R.O. 36 OF 2011

INFO-COMMUNICATIONS ACCESS TO FACILITIES
REGULATIONS

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**THE INFO-COMMUNICATIONS ACCESS TO FACILITIES
REGULATIONS 2011 MADE BY THE GOVERNOR IN COUNCIL
UNDER SECTION 73 OF THE INFO-COMMUNICATIONS
DEVELOPMENT ACT 2009.**

PART 1—PRELIMINARY

1. Short title

These Regulations may be cited as the Info-communications Access to Facilities Regulations 2011.

2. Purpose/objectives

These Regulations provide and establish directives regarding the rights and obligations of a concessionaire pertaining to access to facilities used for public info-communications activities in Montserrat. In particular, these Regulations seek to encourage and ensure access to info-communications facilities which cannot be economically replicated; and/or where replication would be inimical to the esthetics and sustainability of the environment and hazardous to human health.

3. Applicability of regulations

These Regulations apply to a concessionaire that owns or controls a public info-communications network infrastructure in accordance with section 25 of the Info-communications Development Act, 2009.

4. Interpretation

In these Regulations—

“**access agreement**” means an agreement detailing arrangements as negotiated and agreed between a Concessionaire requesting access and the one providing access to facilities comprising his network pursuant to section 25(2) of the Act, and which is binding on the signatory parties over the period of the agreement;

“**access fee**” means any charge for access to a facility that is part of a public info-communications network;

“**access provider**” means the concessionaire providing access to its facilities to an access concessionaire;

“**access seeker**” means the concessionaire seeking access to the facilities of another concessionaire;

“**co-location**” means provision of space at the premises of an access provider for purposes of an access seeker to install its network equipment;

“**Concessionaire**” means a person or an entity authorized to operate a public info-communications network or provide an 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 costs are the most optimal in the market for any info-communications resource;

“**essential facility**” means a facility in the access provider's network which an access seeker requires in order to provide its service and for which no practical or 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;

“**local loop**” means the network linking termination point at the end user premises to the main distribution frame or equivalent facility in a fixed public telephone network.

PART 2—GENERAL OBLIGATIONS

5. Obligation to provide access to facilities

A concessionaire which operates a public info-communications network shall—

- (a) provide access to its facilities, and such access shall not be unreasonably withheld;
- (b) negotiate in good faith, matters concerning access to facilities;
- (c) neither withdraw nor impair access once already granted, save where authorized by the Authority, an arbitration panel or a court of law;
- (d) provide co-location services as designated at Part 5 of these Regulations.

6. Obligation to provide network information

- (1) Upon request, an access provider is required to supply to an access seeker such information about its network and support services as is necessary and sufficient for an access seeker to include facility sharing in its network configuration and operation.
- (2) The information referred to in sub-regulation (1) shall be supplied within twenty-eight (28) days unless an extension is granted by the Authority. The access provider may request an extension in writing from the Authority not later than 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 deadline for supply of the information, and the Authority shall determine, within a reasonable period, the validity of the request.

7. Conditions for Access to essential facilities

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 access provider is posed, the requirement to provide access to essential facilities is mandatory.

PART 3—OBLIGATIONS ON INCUMBENT CONCESSIONAIRES

8. Access to essential facilities owned or controlled by any incumbent concessionaire

Subject to the conditions specified in section 25 of the Act and regulation 7 of these Regulations, an incumbent concessionaire is obliged, upon request from an access concessionaire to—

- (a) provide access to any essential facility which it owns or controls;
- (b) provide access to bundled or unbundled configurations of network components in accordance with the access seeker's request;
- (c) make available equipment and facilities used to combine network components in the same manner it uses such equipment and facilities to combine components to provide a service for its own purposes or that of its subsidiary or partner.

9. Essential facilities to be provided by incumbents

The Authority may from time to time specify the essential facilities to which an incumbent concessionaire shall provide access and such facilities may include but are not limited to the following—

- (a) local loop;
- (b) line side facilities, including but not limited to, the connection between a loop termination at the main distribution frame and the switch line card;
- (c) trunk side facilities including, but not limited to, the trunk-side cross connect panel and a switch trunk card;
- (d) trunk connect facilities, including but not limited to, the connection between trunk termination at the cross connect panel and a switch trunk card;
- (e) interoffice transmission facilities;
- (f) signaling networks, including but not limited to, signaling links and signaling transfer points;
- (h) Service control points.

10. Power to amend inventory of essential facilities

Subject to approval to the Governor in Council, the facilities at regulation 9 may be varied from time to time by the Authority.

PART 4—NON-DISCRIMINATION

11. Conditions of access to be non-discriminatory

- (1) An access provider is obliged to apply equivalent conditions in equivalent circumstances to an access seeker and to provide access to facilities under the same conditions and of the same quality as it provides to itself, its subsidiaries or partners.
- (2) Where an access provider fails to comply with sub-regulation (1) it shall prove to the Authority that it is not technically feasible to replicate the quality level of similar access provided for its own use.

12. Precedent to establish access point

- (1) Previous successful access to a facility at a particular point on an info-communications network is evidence of technically feasible access at that point, or at a similar point on the network where similar essential facilities are used.
- (2) Adherence to the same interfaces or protocol standards at other points of the network shall constitute evidence of similar facilities.

PART 5—CO-LOCATION

13. Requirement to provide information for co-location

An access provider shall, upon request from an access seeker supply information on the availability of the relevant essential facility required to enable co-location, including—

- (a) information on sites along with security arrangements and conditions;
- (b) co-location options at the relevant sites;
- (c) restrictions, if any, on equipment which can be co-located;
- (d) security standards and measures to be put in place by access seekers to guarantee continued security;

- (e) principles governing allocation of co-location space to an access seeker;
- (f) principles governing the rights of entry to co-location space by authorized agents and staff of the access seeker.

14. Refusal of co-location

- (1) Where an access provider refuses an access seeker's request for physical co-location on the grounds of technical barriers or space limitation, it must offer virtual co-location.
- (2) Upon request from the Authority, an access provider must justify its refusal to offer physical co-location on the grounds of technical barriers or space limitation. Such justification must be submitted to the Authority in writing within seven (7) days of the refusal notification.
- (3) The Authority has the right to enter the premises of an access provider, subject to obtaining the necessary warrant, to determine any claims of co-location space limitation.
- (4) Where the Authority deems such claims as unsubstantiated, it shall instruct, in writing, the access provider to make arrangements for co-location in a reasonable time specified by the Authority.
- (5) Where necessary, the Authority shall mandate any access provider to upgrade its facilities to provide requisite co-location space to the access seeker and the access provider shall be entitled to recover the efficient costs of such upgrade from the access seeker.

PART 6—ACCESS AGREEMENT

15. Time for conclusion of access agreement

An access provider shall use all reasonable endeavours to conclude any access agreement within forty five (45) days of the receipt of a request for access. Failure to do so shall constitute a dispute under section 77 of the Act and regulation 23 of these regulations.

16. Basic particulars of access agreement

An access agreement shall include, at a minimum, the price for access to facilities as well as the technical, operational, billing and planning conditions for access.

17. Modification of access agreement

Where the parties agree to modify an access agreement which is similar to a previous access agreement with another access seeker and which was signed and approved by the Authority, the modifications must have the approval of the Authority prior to taking effect and becoming binding on the signatory parties. The Authority, subject to appropriate consultation shall not withhold approval without reason, and such reasons shall be given within twenty-eight (28) days of submission of the agreement to the Authority.

18. Submission and approval of access agreement

Signed copies of an access agreement shall be submitted to the Authority for approval within fourteen (14) days of date of signature and such agreements shall not take effect or be binding on the parties without the approval of the Authority.

19. Publication of access agreement

The Authority shall publish any access agreement on its website within seven (7) days of the approval date.

PART 7—COMMERCIAL ARRANGEMENTS

20. Charges

All charges for access to facility shall be just and reasonable, and based efficient costs determined by such costing principles as the Authority may from time to time require.

21. Alternative charging principles

Where the costing principles in reference at regulation 20 are not in place the parties shall determine access to facilities charges using costing principles agreed between both parties and approved by the Authority. The Authority, within a reasonable time period shall give its decision on the proposed charges and where such rates are denied the Authority shall give reasons within a reasonable time period and specify alternative rates.

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22. Supply of cost-based charging information to the Authority

An access provider shall, upon request, supply to the Authority data and analysis to demonstrate that its charges are cost-based pursuant to regulation 20 of these regulations 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.

PART 8—DISPUTE RESOLUTION

23. Request for resolution of disputes

Where difficulty arises in respect of any matter under commercial negotiation, either party may refer the matter to the Authority in accordance with the Dispute Resolution Rules made under the Act.

PART 9—MISCELLANEOUS

24. Repeal

The Info-communications Access to Facilities Regulations 2009 (S.R.O. No. 31 of 2009) is repealed.

Made by the Governor in Council this 28th day of July, 2011.

Lynette Farrell
CLERK OF COUNCIL (Ag.)

Published by exhibition at the Clerk of Councils Office, Farara Plaza, Brades, this 10th day of August, 2011.

Lynette Farrell
CLERK OF COUNCIL (Ag.)