

LEGAL NOTICE No. 180

REPUBLIC OF TRINIDAD AND TOBAGO

THE TELECOMMUNICATIONS ACT, 2001

REGULATIONS

MADE BY THE MINISTER UNDER SECTION 78(1) OF THE
TELECOMMUNICATIONS ACT

THE TELECOMMUNICATIONS (ACCESS TO FACILITIES)
REGULATIONS, 2006

1. These Regulations may be cited as the Telecommunications Citation
(Access to Facilities) Regulations, 2006.

PART I

PRELIMINARY

2. (1) In these Regulations—

“access agreement” means a binding agreement between concessionaires permitting access by an access seeker to the facilities of an access provider pursuant to section 26 of the Act;

“access charge” means any charge for access to any facility of a public telecommunications network or broadcasting services concessionaire;

“access provider” means the concessionaire who provides access to its facilities to an access seeker;

“access request” means a request made pursuant to regulation 7, for access to the facilities of a concessionaire;

“access seeker” means a concessionaire who seeks access to the facilities of another concessionaire;

“the Act” means the Telecommunications Act, 2001;

“collocation” means the provision of space on the premises of an access provider for the use of an access seeker for the purpose of installing equipment in connection with the latter’s public telecommunications network or broadcasting services;

Interpreta-
tion

Act No. 4 of
2001

First
Schedule

“concessionaire” means a person authorized to operate a public telecommunications network or provide a broadcasting service under section 21 of the Act;

“local access loop” means the facilities which connect the customer terminal equipment to the first switching or routing point in a network;

“Non-disclosure Agreement” means an agreement substantially in the form set out in the First Schedule.

(2) For the purpose of these Regulations, access includes collocation.

PART II

OBLIGATION OF CONCESSIONAIRES

General
obligation to
provide access
to facilities

3. A holder of a concession for the provision of a public telecommunications network or broadcasting service shall—

- (a) upon written request, provide access to its facilities and such access shall not be unreasonably withheld;
- (b) negotiate in good faith on matters concerning access to facilities; and
- (c) neither withdraw nor impair access once already granted, except—
 - (i) where authorized by the Authority; or
 - (ii) in accordance with—
 - A. a dispute resolution process under section 82 of the Act; or
 - B. an Order made by a court.

Access to be
provided

4. Without prejudice to the generality of the foregoing, a concessionaire shall provide access to the following facilities including where applicable, their functional equivalents:

- (a) local access loop;
- (b) line side facilities including the connection between an access loop termination at the main distribution frame and the switch line card or such points which are functionally equivalent;
- (c) trunk-side facilities, including the trunk-side cross connect panel and a switch trunk card or such points which are functionally equivalent;

- (d) trunk connect facilities, including the connection between trunk termination at a cross connect panel and a switch trunk card or such points which are functionally equivalent;
- (e) inter-office transmission facilities;
- (f) signalling networks including signalling links and signalling transfer points;
- (g) service control points; and
- (h) ducts, poles and towers used for supporting or carrying telecommunication facilities.

5. (1) A concessionaire shall provide access under the same terms and conditions and of the same quality as it provides for its own networks and services, the networks and services of its subsidiaries and partners or the networks and services of any other concessionaire to which it provides access. ^{Non-discrimination}

(2) Where a concessionaire fails to comply with subregulation (1), it shall upon request from the Authority, prove to the satisfaction of the Authority that it is not technically feasible to replicate the level of quality of access or to provide access under the same terms and conditions as it provides for its own use.

6. (1) Previous successful access to a facility at a particular point on a network shall constitute evidence of technically feasible access at that point or at a similar point on the networks where similar facilities are used. ^{Evidence of feasibility}

(2) Adherence to the same interfaces at other points of the network shall constitute evidence of similar facilities.

7. A concessionaire shall specify, upon request from an access seeker, the availability of collocation within its facilities, including— ^{Requirement to specify availability of collocation}

- (a) information on the relevant sites along with security arrangements and conditions;
- (b) collocation options at the relevant sites;
- (c) restrictions, if any, on equipment which can be collocated;
- (d) security standards and measures to be put in place by access seekers to guarantee security of the facilities;
- (e) principles governing allocation of collocation space to access seekers; and
- (f) principles governing the rights of entry to collocation space by the staff of the access seeker.

Requirement
to supply
information
for access

8. (1) Subject to subregulation (4), a concessionaire shall supply to any other concessionaire upon request, such information about its network and services as is required in relation to procuring access to the concessionaire's facilities.

(2) Subject to subregulation (3), the information referred to in subregulation (1) shall be supplied within twenty-eight days of the request.

(3) The concessionaire may request from the Authority, an extension in writing, not later than seven days before expiry, of the period referred to in subregulation (2).

Second
Schedule

(4) The Authority may exempt certain particulars from the requirements of subregulation (1) on the grounds of confidentiality or competitive sensitivity, subject to the procedures set out in the Second Schedule.

(5) The Authority may revoke an exemption granted under subregulation (4), at the request of a concessionaire where there has been a material change in the relevant circumstances, but in such case shall afford to both parties, a reasonable opportunity to make submissions to the Authority.

(6) All information provided under this regulation shall be used for the purpose of facilitating access only, and shall not be disclosed to any third party without the prior written permission of the concessionaire who provided the information.

(7) A concessionaire who receives information under this regulation shall, prior to receipt of the information, execute a Non-disclosure Agreement for the benefit of the concessionaire who provided the information.

PART III

NEGOTIATING ACCESS AGREEMENTS

Access
request

9. (1) A concessionaire may make an access request at any time.

(2) For the purpose of processing an access request, a concessionaire shall—

- (a) provide the Authority with a designated contact or contacts;
and
- (b) make sufficient provision to ensure that the access request is dealt with promptly.

(3) An access request shall be forwarded to the designated contact except that where no contact has been provided, the request may be forwarded to the registered address of the access provider.

(4) An access request shall, unless otherwise agreed between the access provider and the access seeker, include—

- (a) the reference number of the access seeker's concession (or proof of a submitted application for a concession);
- (b) the facility or facilities to which access is required;
- (c) details of the access required;
- (d) the date by which access is required;
- (e) the period for which access is required;
- (f) details of any equipment to be installed at the facility, together with details of the security, safety, environmental, and spatial requirements of such equipment;
- (g) the extent to which access is required by the access seeker's personnel to the facility to install, maintain or use the equipment to be installed; and
- (h) any other requirement which the Authority may from time to time, prescribe.

(5) The access seekers shall forward to the Authority, a copy of the access request.

(6) The access provider shall acknowledge receipt of the access request within seven days of its receipt of the request.

(7) The access provider may upon its receipt of the access request, request any further information that it may reasonably require, in order to process the access request.

(8) A request made under subregulation (7) shall be copied to the Authority and complied with by the access seeker within seven days of receipt of the request.

(9) Where the request made under subregulation (7) is not satisfied in accordance with subregulation (8), the period specified in regulation 11 respecting the negotiation of the access agreement shall be increased by a period corresponding to the delay in the provision of the information.

10. (1) Nothing in this regulation shall be construed as preventing any person who has applied to the Authority for a concession under section 21 of the Act, but whose application is still pending, from making a valid access request.

Access
request
pending
approval of
concession
application

(2) The effecting of access in accordance with a request made pursuant to these Regulations shall be conditional upon the grant of a concession to the applicant.

(3) The applicant shall provide to the access provider at the time of the access request, such security as the access provider may reasonably require to indemnify the access provider from any loss that he may suffer in the event that the application for a concession is unsuccessful.

Time for conclusion of access agreement	11. (1) A concessionaire shall use all reasonable endeavours to conclude an access agreement within forty-two days of its receipt of an access request, unless such period has been expressly extended by the Authority in writing, or pursuant to regulation 9(9) except that where the request is made under regulation 10, the request shall be deemed to have been received by the access provider on the date of grant of the concession. (2) Failure by a concessionaire to comply with this regulation shall constitute a dispute referable to the Authority under regulation 25.
Content of access agreement	12. Every access agreement shall include prices for access to facilities as well as the technical, operational, billing and planning conditions for access.
Access agreements available	13. (1) The terms and conditions for access contained in the most recent access agreement under which a concessionaire is the access provider shall be made available to any other concessionaire requesting access. (2) Each access agreement shall provide for amendment or modification to permit incorporation of the terms and conditions referred to in subregulation (1) and such amendment or modification shall be effected within fourteen days of a request from an access seeker. (3) Failure by a concessionaire to comply with subregulation (2), shall constitute a dispute referable to the Authority under regulation 25. (4) For the purposes of this regulation, "access agreement" includes amendments and modifications to such agreement.
Access charges reciprocal	14. Access charges for equivalent access in equivalent circumstances shall be reciprocal between concessionaires.
Attendance by Authority at meetings	15. (1) Every access provider and access seeker shall notify the Authority in a timely manner of every meeting scheduled for the purpose of negotiating access. (2) The Authority may, upon the giving of twenty-four hours prior written notice to the relevant concessionaires, attend any meeting referred to in subregulation (1) in the capacity of observer only.
Submission of access agreements	16. (1) Every access agreement or modification thereto shall be submitted to the Authority within fourteen days of signature by the parties. (2) The Authority may, within twenty-one days of the submission of an access agreement or modification thereto, serve notice on the parties to the agreement requiring the access provider's compliance with regulation 18.

(3) Compliance referred to in subregulation (2) shall be effected by the access provider within fourteen days of service of notice from the Authority and a modified agreement shall be resubmitted to the Authority for its consideration.

17. Every access agreement shall be published by the Authority on the website of the Authority within fourteen days of its acceptance by the Authority. Publication of access agreement

PART IV

COMMERCIAL ARRANGEMENTS

18. (1) A concessionaire shall set access rates based on its costs determined in accordance with such costing methodologies, models or formulae as the Authority may, from time to time, establish. Basis of access charges

(2) Where the relevant data for the establishment of the costing methodologies, models or formulae are unavailable within a reasonable time, the concessionaire may set access rates with reference to such costing benchmarks, as determined by the Authority, that comport with internationally accepted standards for such benchmarks.

(3) A concessionaire shall within twenty-eight days of a written request from the Authority, unless this period is expressly extended by the Authority in writing, supply to the Authority such data as the Authority may require, for the purpose of determining that its access rates are in accordance with this regulation.

PART V

IMPLEMENTATION OF ACCESS AGREEMENTS

19. (1) Every access agreement shall stipulate a period not exceeding twenty-eight days within which access shall be effected except with the prior approval of the Authority in writing. Access agreement to stipulate time for access

(2) Notwithstanding subregulation (1), the Authority may upon written application of a concessionaire extend the period referred to in subregulation (1).

20. A concessionaire shall use all reasonable endeavours to effect access within twenty-eight days of concluding the relevant access agreement, or such longer period as may be approved by the Authority in accordance with regulation 19. Effecting access

21. An access provider shall not deprive an access seeker of any benefit granted under their access agreement except in accordance with the access agreement or with the prior written consent of the Authority. No deprivation of access

Costs of
modification
recoverable

22. Where access requires modification of the facilities of an access provider, the reasonably incurred costs of such modification shall be recoverable from the access seeker, such costs to be determined in the manner prescribed by the Authority.

PART VI

DENIAL OF ACCESS REQUESTS

Grounds for
denial of
access
request

23. (1) A concessionaire shall not deny a request for access at a particular location except for insufficient capacity, or for reasons of safety, security, reliability or difficulty of a technical or engineering nature.

(2) Every concessionaire who denies a request for access shall notify the access seeker and the Authority within fourteen days of receipt of the access request.

(3) Upon written request by the Authority, the access provider shall provide justification for the denial, to the Authority in writing within seven days of receipt of the request.

(4) The Authority may—

- (a) request of the access provider, the production of any records or documents and copies thereof; and
- (b) with the agreement of the access provider, enter the premises of the access provider and inspect any or all relevant facilities,

to determine the reasonableness of any denial of access.

(5) Where the Authority deems that the access has been unreasonably withheld, the Authority may instruct the access provider in writing to make arrangements for access within a time specified by the Authority.

(6) An instruction pursuant to subregulation (5)—

- (a) shall include such interim terms and conditions for access as the Authority may consider appropriate and be applicable until an access agreement is concluded between the parties;
- (b) may request a concessionaire to modify its facilities to provide or facilitate access.

(7) In acting under subregulation (6), the Authority shall take into account any relevant factors which may include but are not limited to the extent to which the access requested impacts on the networks or services of the access seeker, the availability and cost of alternatives, and the cost of any required modifications.

- (8) The reasonably incurred costs of a modification shall be—
- (a) recoverable from the access seeker; and
 - (b) determined in accordance with such methodology as the Authority may establish.

PART VII

DISPUTE RESOLUTION

24. Where a dispute arises with respect to any matter respecting access, the matter may, on the agreement of both parties, be referred to the Authority for consultation and guidance prior to either party submitting the matter to the Authority as a dispute.

25. Save as provided in regulation 24, every dispute regarding access shall be submitted to the Authority for resolution in accordance with the dispute resolution process established by the Authority under section 82 of the Act.

26. (1) The Authority may, in relation to any dispute referred to under these Regulations, direct that the parties implement such interim arrangement for access as the Authority considers appropriate having regard to the nature of the dispute.

(2) An interim arrangement may speak to prices and include any other term or condition for access whether or not the Authority considers submissions made by the parties subject to such times for submissions as the Authority shall establish.

(3) An interim arrangement shall be instituted by the parties within a period determined by the Authority and shall remain in force until such time as the dispute has been resolved.

27. The final resolution of a dispute in respect of which an interim arrangement was implemented shall—

- (a) be effective on the date on which the interim arrangement was effected; and
- (b) include provisions for compensation to any party that has suffered any loss and damage as a result of the arrangement.

28. A concessionaire who contravenes any provision of these Regulations commits an offence and is liable on summary conviction to a fine of fifty thousand dollars.

FIRST SCHEDULE

[Regulations 2 and 8(7)]

NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is made this day of

Between

[INSERT NAME OF THE CONCESSIONAIRE SEEKING ACCESS] a company incorporated under the laws of [INSERT PLACE OF INCORPORATION] whose registered office is at [INSERT REGISTERED OFFICE ADDRESS] ("Access Seeker")

And

[INSERT NAME OF THE CONCESSIONAIRE PROVIDING ACCESS], a company incorporated under the laws of [INSERT PLACE OF INCORPORATION] whose registered office is at [INSERT REGISTERED OFFICE ADDRESS] ("Access Provider")

Each a "Party" and collectively the "Parties".

WHEREAS the Parties are discussing certain matters in relation to the provision of services by Interconnection Provider to Interconnecting Concessionaire and by Interconnecting Concessionaire to Interconnection Provider which may require each Party to disclose certain proprietary, secret or confidential information to the other Party; and

Whereas the Party disclosing information shall hereinafter be referred to as the "Disclosing Party" and the Party receiving such information shall hereinafter be referred to as the "Receiving Party".

Now, therefore in consideration of the premise and the mutual covenants contained in this Agreement, the Parties hereto agree as follows:

1. DEFINITIONS

"Confidential Information" as referred to in this Agreement means the business, commercial, economic, financial, operational, technical and planning information and data disclosed to the Receiving Party by the Disclosing Party during the discussions whether in written, oral or in machine-readable or representational form including this Agreement, communicated to the Receiving Party, acquired by the Receiving Party from the Disclosing Party, prepared by the Receiving Party from or in connection with any of the above information or which contain or are based in whole or in part upon such information to the extent it includes or is derived from such information. (For the avoidance of doubt, this Agreement apply to all such information whether disclosed or prepared before or after the date of this Agreement);

"the Discussions" means any discussions relating to the Business Purpose or constituting advice in respect of it;

"the Business Purpose" means the objective and/or intention of agreeing suitable terms for the provision of services by Interconnection Provider to Interconnecting Concessionaire and by Interconnecting Concessionaire to Interconnection Provider including but not limited to agreement of terms for an interconnection agreement.

2. DISCLOSURE OF INFORMATION

The Parties acknowledge that the Confidential Information is a valuable asset belonging to the Disclosing Party. Except as expressly provided for in this Agreement, the Parties agree that they will not during or after the term of this Agreement disclose the Confidential Information of the other Party to any person, firm, corporation, association or any other entity for any reason or purpose whatsoever without the prior written consent of the Disclosing Party. Notwithstanding the above, the Parties agree the Confidential Information may be disclosed to their agents, professional advisers and associated companies (associated companies means a subsidiary or holding company of a Party or another subsidiary of such a holding company) strictly for the Business Purpose provided that such agents, professional advisers and companies have a need to know such information, and agree to comply with the obligations as contained herein. The Receiving Party shall procure that such persons comply with the undertakings and terms of this Agreement as if such persons were made direct parties to it and do not disclose the Confidential Information further. The Parties further agree that they shall not utilise, employ, exploit or in any other manner whatsoever use the Confidential Information disclosed by the other Party for any purpose other than the Business Purpose without the prior express written consent of the Disclosing Party, including, but not limited to, for purposes of competing in any way with the other party or any of its subsidiaries or affiliates.

3. TITLE

All Confidential Information is acknowledged by the Receiving Party to be the property of the Disclosing Party and the disclosure of the Confidential Information shall not be deemed to confer any rights to that Confidential Information on the Receiving Party.

4. RESTRICTIONS ON DISCLOSURE AND USE OF THE CONFIDENTIAL INFORMATION

The Receiving Party will restrict the possession, knowledge and use of Confidential Information to the officers, employees, agents, and professional advisers of the Receiving Party who have a need to know Confidential Information for the Business Purpose. The Receiving Party will not use the Confidential Information other than for the Business Purpose. Nothing in this Agreement shall transfer to the Receiving Party any right or interest whatsoever in any intellectual property belonging to the Disclosing Party.

5. STANDARD OF CARE

The Parties agree that they shall protect the Confidential Information of the other Party using not less than the same standard of care that each party applies to its own proprietary, secret or Confidential Information and that the Confidential Information shall be stored and handled in such a way as to prevent unauthorised disclosure. Further, in the standard of care applied, proper account will be taken, where applicable, of the fact that the Confidential Information relates in any way to a company which is publicly traded.

6. RETURN OF CONFIDENTIAL INFORMATION

The Disclosing Party may request in writing at any time that any Confidential Information disclosed pursuant to the terms of this Agreement and any copies thereof be returned, or in the case of machine-readable or electronic information be permanently erased, with a written statement to the effect that upon such return the Receiving Party has not knowingly retained in its possession or under its control, either directly or indirectly, any Confidential Information or copies thereof and the Receiving Party shall comply with any such request within seven days of receipt of such request.

7. EXCLUDED INFORMATION

The obligations pursuant to this Agreement shall not apply to any information that—

- (a) is in the possession of the Receiving Party prior to receipt from the Disclosing Party;
- (b) is or becomes publicly known, otherwise than as a consequence of a breach of this Agreement;
- (c) is developed independently by the Receiving Party;
- (d) is disclosed by the Receiving Party to the Telecommunications Authority of Trinidad and Tobago;
- (e) is disclosed by the Receiving Party to satisfy a legal demand by a competent court of law or governmental body (“Government Authorities”) having jurisdiction over the parties, or valid legal requirements of any applicable stock exchange, provided however that in these circumstances the Receiving Party shall advise the Disclosing Party prior to disclosure so that the Disclosing Party has an opportunity to defend, limit or protect against such production or disclosure; provided further that the Receiving Party will disclose only that portion of the Confidential Information which is legally required to be disclosed and the Receiving Party will exercise its reasonable efforts to obtain a protective order or other reliable assurance from such Government Authorities or stock exchange that confidential treatment will be accorded to any Confidential Information required to be disclosed;
- (f) is disclosed to a third party pursuant to written authorisation from the Disclosing Party;
- (g) is received from a third party without similar restrictions and without breach of this Agreement.

8. INDEPENDENT DEVELOPMENT

The Disclosing Party acknowledges that the Receiving Party may currently or in the future be developing information internally, or receiving information from other parties that is similar to the Confidential Information. Accordingly, nothing in this Agreement will be construed as a representation or agreement that the Receiving Party will not develop or have developed for its products, concepts, systems or techniques that are similar to or compete with the products, concepts, systems or techniques contemplated by or embodied in the Confidential Information, provided that the Receiving Party does not violate any of its obligations under this Agreement in connection with such development.

9. TERM

This Agreement is intended to cover Confidential Information disclosed or received by either Party prior or subsequent to the date of this Agreement. Unless otherwise earlier terminated, this Agreement shall remain in effect for five years from the date provided, however, that each Party’s obligations with respect to the other Party’s Confidential Information disclosed or received prior to termination or expiration will survive for ten additional years following the expiration or termination of this Agreement.

10. PUBLIC ANNOUNCEMENTS

The Parties shall maintain in strict confidence and not disclose publicly or to any third party, the substance of any discussions or negotiations between them, the terms of any proposed arrangements or agreements, or any other information relating thereto unless it has first consulted the other Party and obtained its written consent. The Parties agree that each shall not, and shall not permit any of its affiliates, subsidiaries, persons, or other entities or their professional advisers to make any public announcements about the substance of any discussions regarding such arrangements or agreements and any other business and operating plans being discussed or negotiated, whether in the form of press release or otherwise, without first consulting with the other Party and obtaining its written consent.

11. REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants to the other that it is a corporation duly organised and validly existing in the jurisdiction of its incorporation. Each Party represents that it has full corporate power and authority to enter into this Agreement and to do all things necessary for the performance of this Agreement.

12. ADDITIONAL ACTION

Each Party to this Agreement shall execute and deliver such other documents and do such other acts and things as may be necessary or desirable to carry out the terms, provisions and purposes of this Agreement.

13. AMENDMENTS

No amendment, interpretation or waiver of any of the provisions of this Agreement shall be effective unless made in writing and signed by the Parties to this Agreement.

14. ENFORCEMENT

No delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any waiver on the part of any Party of any such right, power or privilege, nor any single or partial exercise of any such right, power or privilege preclude any further exercise thereof or the exercise of any other such right, power or privilege. The Parties agree that the Disclosing Party would be irreparably injured by a breach of this Agreement by the Receiving Party and that the Disclosing Party shall be entitled to equitable relief, including by way of injunction and specific performance in the event of any breach of this Agreement. Such remedy shall not be deemed to be the exclusive remedy for a breach of this Agreement but shall be in addition to all other remedies available at law or in equity.

15. HEADINGS

The headings of paragraphs are used for convenience only and shall not affect the meaning or construction of the contents of this Agreement.

16. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements between the Parties, whether written or oral, with respect to the subject matter of this Agreement.

17. GOVERNING LAW

This Agreement and the relationships of the Parties in connection with the subject matter of this Agreement shall be governed by and constructed in accordance with the laws of Trinidad and Tobago and the Parties agree that any dispute hereunder shall be referred to the Telecommunications Authority of Trinidad and Tobago in accordance with the provisions of the Telecommunications Act, 2001.

18. NOTICES

Any notice or other communication required to be given or sent hereunder shall be in writing and shall be delivered personally, sent by prepaid certified or registered post (airmail if overseas) with written receipt requested or sent by international courier to the Party concerned at its address given below in this Agreement or such other address as the Party concerned shall have notified in accordance with this clause to the other Party with a copy sent by facsimile at the number below or such other number as notified from time to time in accordance with this clause. Any such notice shall be deemed to be served and received—

- (a) if left at any such address, at the time when it is so left;
- (b) if sent by post, on the seventh day following the day of posting;
- (c) if sent by international courier, on the fourth day following the day of placing it with the relevant courier service.

The initial addresses and facsimile numbers of the Parties hereto for the purposes of this Agreement are as follows:

Access Seeker: [INSERT ACCESS SEEKER'S
ADDRESS]

Access Provider: [INSERT ACCESS PROVIDER'S
ADDRESS]

19. COUNTERPARTS

This Agreement may be executed in counterparts, all of which shall constitute one agreement, and each such counterpart shall be deemed to have been made, executed and delivered on the date set out at the head of this Agreement, without regard to the dates or times when such counterparts may actually have been made, executed or delivered.

20. SEVERABILITY

In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement. If any provision is held to be void or declared illegal, invalid or unenforceable for any reason whatsoever, that provision shall be divisible from this Agreement and shall be deemed to be deleted from it and the validity of the remaining provisions shall not be affected and the Agreement shall be carried out as nearly as possible according to its original terms and intent. If such deletion materially affects the interpretation of this Agreement, the parties shall use their best endeavours to negotiate in good faith with a view to agreeing a substitute provision as closely as possible reflecting the commercial intention of the parties.

21. EXPLORATORY DISCUSSION NOT BINDING

The Parties agree that this Agreement, continuing discussions, future exchange of Confidential Information and non-confidential information, past or future correspondence (including without limitation, correspondence indicating interest or intent) and other communications between the Parties shall not commit either Party to continue discussions or negotiate or be legally binding as an informal agreement or

agreement to agree to a potential business relationship. The only way the Parties shall be bound to a business relationship, if at all, shall be by a mutually satisfactory definitive written agreement signed by the Parties. Any research and development, prototyping, or other action or expense which either Party takes or incurs in anticipation that a business relationship will be consummated shall be entirely at the acting Party's risk and expenses and shall not impose any liability on any other party.

22. SUCCESSORS AND ASSIGNS

References in this Agreement to either Party shall include any successors or assigns of that Party.

23. LIMITED RELATIONSHIP

This Agreement will not create a joint venture, partnership or other formal business relationship or entity of any kind or an obligation to form any such relationship or entity. Each Party will act as an independent contractor and not as an agent of the other Party for any purpose and neither will have the authority to bind the other.

24. CUMULATIVE OBLIGATIONS

Each Party's obligations hereunder are in addition to and not exclusive of any and all of its other obligations and duties to the other Party.

IN WITNESS WHEREOF the Parties have caused their duly authorised representatives to execute this Agreement as of the date set out at the head of this Agreement.

For and on behalf of Access Seeker

By: _____

Name: _____

Title: _____

For and on behalf of Access Provider

By: _____

Name: _____

Title: _____

SECOND SCHEDULE

[Regulation 8(4)]

PROCEDURE TO BE FOLLOWED IN SEEKING EXEMPTION OF CERTAIN
INFORMATION ON THE GROUNDS OF CONFIDENTIALITY OR
COMPETITIVE SENSITIVITY UNDER REGULATION 8(4)

1. A concessionaire seeking to have information exempted shall make a written request to the Authority, copied to the concessionaire requesting the information, not later than seven days before the expiration of the period for supplying the information.
2. The concessionaire requesting the information may make representations to the Authority on the request for exemption, such representations to be provided to the Authority within seven days of receipt of the request for exemption.
3. The Authority shall notify both interested concessionaires of its determination within twenty-one days of the request. The Authority may include in its determinations such reasonable conditions for the disclosure as it considers appropriate, including the manner of provision of the information, and the time for such provision.
4. The Authority shall be entitled to grant an exemption in relation to the whole or part only of the request made.

Dated this 3rd day of May, 2006.

L. SAITH
*Minister of Public Administration
and Information*

Laid in the House of Representatives this 25th day of August, 2006.

J. SAMPSON
Clerk of the House

Laid in the Senate this 29th day of August, 2006.

N. JAGGASSAR
Clerk of the Senate