

Chapter Thirteen

Telecommunications

Article 13.1: Scope and Coverage

1. This Chapter applies to:
 - (a) measures adopted or maintained by a Party relating to access to and use of public telecommunications services;
 - (b) measures adopted or maintained by a Party relating to obligations of suppliers of public telecommunications services;
 - (c) other measures relating to public telecommunications networks or services; and
 - (d) measures adopted or maintained by a Party 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, this Chapter does not apply to any measure adopted or maintained by a Party 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 parties.

Article 13.2: Access to and Use of Public Telecommunications Services

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

- (a) purchase or lease, and attach terminal or other equipment that interfaces with 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 the other Party may use public telecommunications services for the movement of information in its territory or across its borders and for access to information contained in databases or otherwise stored in machine-readable form in the territory of either Party.

4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to:

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

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

- (b) 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 13.3: Obligations Relating to Suppliers of Public Telecommunications Services¹

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 the other Party.
 - (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 and only use such information for the purpose of providing those services.
 - (c) Each Party shall provide its telecommunications regulatory body the authority to require public telecommunications suppliers to file their interconnection agreements.

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.

Dialing Parity

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

¹ This Article is subject to Annex 13.3. Paragraphs 2 through 4 of Article 13.3 do not apply with respect to suppliers of commercial mobile services. Nothing in this Article shall be construed to preclude a Party from imposing the requirements set out in this Article on suppliers of commercial mobile services.

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

Treatment by Major Suppliers

1. Each Party shall ensure that any major supplier in its territory accord suppliers of public telecommunications services of the other Party treatment no less favorable than such major supplier accords to itself, its subsidiaries, its 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 who, 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 facilities and commercially relevant information which 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 the other Party, public telecommunications services that such major

² This Article is subject to Annex 13.3. Article 13.4 does not apply with respect to commercial mobile services. This Article is without prejudice to any rights or obligations that a Party may have under the GATS, and nothing in this Article shall be construed to preclude a Party from imposing the requirements set out in this Article on suppliers of commercial mobile services.

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.³

Unbundling of Network Elements

- 4. (a) Each Party shall provide its telecommunications regulatory body the authority to require major suppliers in its territory to offer access to network elements on an unbundled basis on terms, 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 and 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 the other Party:

- (i) at any technically feasible point in the major supplier's network;
- (ii) under non-discriminatory terms, conditions (including technical standards and specifications), and rates;
- (iii) of a quality no less favorable than that provided by such major 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 the suppliers need not pay for network components or facilities that they do not require for the service to be provided; and

³ 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.

- (v) on request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

(b) Options for Interconnecting with Major Suppliers

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

- (i) a reference interconnection offer or another standard interconnection offer containing the rates, terms, and conditions that the major suppliers offer generally to suppliers of public telecommunications services; or
- (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

If a major supplier has a reference interconnection offer or other standard interconnection offer, the Party in whose territory the major supplier is located shall require such offer to be made publicly available.

(d) Public Availability of the 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 or other relevant body.
- (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 the other Party leased circuits services that are public telecommunications

services on terms, conditions, and at rates that are reasonable and non-discriminatory.

- (b) In carrying out subparagraph (a), each Party shall provide its telecommunications regulatory body the authority to require major suppliers in its territory to offer leased circuits services that are public telecommunications services to enterprises of the other Party at flat-rate, 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 the other Party physical co-location of equipment necessary for interconnection on terms, 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:
 - (i) provide an alternative solution, or
 - (ii) facilitate virtual co-location in its territory,on terms, 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 Rights-of-Way

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

Article 13.5: Submarine Cable Systems

Each Party shall ensure reasonable and non-discriminatory treatment for access to submarine cable systems (including landing facilities) in its territory, where a supplier is authorized to operate a submarine cable system as a public telecommunications service.

Article 13.6: Conditions for the Supply of Information Services

1. Neither Party may require an enterprise in its territory that it classifies⁴ as a supplier of information services and that supplies such services over facilities that it does not own to:

- (a) supply such services to the public generally;
- (b) cost-justify its rates for such services;
- (c) file a tariff for such services;
- (d) interconnect its networks with any particular customer for the supply of such services; or
- (e) conform with any particular standard or technical regulation for interconnection other than for interconnection to 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 13.7: Independent Regulatory Bodies⁵ 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.

3. Neither 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 the other Party on the ground that the supplier receiving more favorable treatment is owned, wholly or in part, by the national government of the Party.

Article 13.8: Universal Service

⁴ For purposes of this Article, each Party's telecommunications regulatory body may classify which services in its territory are information services.

⁵ Each Party shall endeavor to ensure that its telecommunications regulatory body has adequate resources to carry out its functions.

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

Article 13.9: 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 it applies;
 - (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 13.10: 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. For greater certainty, a Party's measures regarding the allocation and assignment of spectrum and regarding frequency management are not measures that are *per se* inconsistent with Article 11.4 (Market Access), which is applied to Chapter Ten (Investment) through Article 11.1.3 (Scope and Coverage). Accordingly, each Party retains the right to establish and apply its spectrum and frequency management policies, which may limit the number of suppliers of public telecommunications services, provided that it does so in a manner that is consistent with the relevant provisions of this Agreement. Each Party also retains the right to allocate frequency bands taking into account present and future needs.

Article 13.11: Enforcement

Each Party shall provide its competent authority with the authority to establish and enforce the Party's measures relating to the obligations set out in Articles 13.2 through 13.5.

Such authority shall include the ability to impose effective sanctions, which may include financial penalties, injunctive relief (on an interim or final basis), or the modification, suspension, and revocation of licenses or other authorizations.

Article 13.12: Resolution of Domestic Telecommunications Disputes

Further to Articles 18.4 (Administrative Proceedings) and 18.5 (Review and Appeal), each Party shall ensure the following:

Recourse to Telecommunications Regulatory Bodies

- (a) (i) enterprises of the other 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 13.2 through 13.5;⁶
- (ii) suppliers of public telecommunications services of the other Party that have requested interconnection with a major supplier in the Party's territory may seek review, within a reasonable and publicly available period of time after the supplier requests interconnection, by a telecommunications regulatory body⁷ 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 petition the body to reconsider that determination or decision;⁸ and

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.

⁶ For Panama, the regulatory body shall be the *Autoridad Nacional de los Servicios Publicos* or its successor.

⁷ For the United States, this body may be a state regulatory authority.

⁸ With respect to Panama, the regulatory body shall issue its determination or decision on a petition for reconsideration within two months of the date on which the petition is filed. During the period of reconsideration, the determination or decision under reconsideration shall be suspended.

With respect to the United States, a petition for reconsideration may not constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body, unless an appropriate authority stays the determination or decision.

Article 13.13: Transparency

Further to Articles 18.2 (Publication) and 18.3 (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 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:
 - (i) measures relating to:
 - (A) tariffs and other terms and conditions of service;
 - (B) specifications of technical interfaces;
 - (C) bodies responsible for preparing, amending, and adopting standards-related measures affecting access and use;
 - (D) conditions for attaching terminal or other equipment to the public telecommunications network; and
 - (E) notification, permit, registration, or licensing requirements, if any; and
 - (ii) procedures relating to judicial and other adjudicatory proceedings.

Article 13.14: Flexibility in the Choice of Technologies

Neither 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.⁹

Article 13.15: Forbearance

⁹ For greater certainty, nothing in this Chapter shall be construed to prevent a telecommunications regulatory body from requiring the proper license or other authorization to supply each public telecommunications service.

The Parties recognize the importance of relying on market forces to achieve wide choice 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 such regulation is not necessary to prevent unreasonable or discriminatory practices;
- (b) enforcement of such regulation is not necessary for the protection of consumers; and
- (c) forbearance is consistent with the public interest, including promoting and enhancing competition between suppliers of public telecommunications services.

Article 13.16: Relationship to Other Chapters

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

Article 13.17: Definitions

For purposes of this Chapter:

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

cost-oriented means based on cost, and may include a reasonable profit,¹⁰ 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 like 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 2.1 (Definitions of General Application), and includes a branch of an enterprise;

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

¹⁰ For Panama, cost-oriented shall include a reasonable profit.

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

- (a) are exclusively or predominantly supplied 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 when switching between like suppliers of public telecommunications services;

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

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 13.3

Rural Telephone Suppliers

1. A state regulatory authority 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 13.3 and from the obligations contained in Article 13.4.
2. Article 13.4 does not apply to rural telephone companies in the United States, as defined in section 3(37) of the *Communications Act of 1934*, as amended, unless a state regulatory authority orders otherwise.