

Interconnection and Access Rules

Chapter I. Preliminary

Section 1. Authority

- (1) These rules are promulgated pursuant to the powers granted by Section 341 of Title 21 of the Code of the Federates States of Micronesia.

Section 2. Title

- (1) These rules shall be cited as the “Interconnection and Access Rules, 2019.”

Section 3. Objectives

- (1) The objectives of these rules are to:
 - (a) promote liberalization, competition, the interest of consumers, and investment in the communications sector;
 - (b) encourage commercially negotiated interconnection and access agreements between Licensees;
 - (c) ensure interoperability and end-to-end connectivity of Communications Networks and Communications Services;
 - (d) establish mechanisms to resolve interconnection and access disputes;
 - (e) define the standard terms and pricing principles for interconnection and access services;
 - (f) identify mandatory interconnection and access services; and
 - (g) set forth rules on Access to Bottleneck Facilities to minimize or avoid, as much as possible, unnecessary duplication of such infrastructure.

Section 4. Application

- (1) These rules apply:
 - (a) for purpose of Interconnection, to Licensees that use switching and routing Equipment to offer services to the public; and
 - (b) for purpose of Access, to Licensees that:
 - (i) own or Control Bottleneck Facilities; and
 - (ii) that request Access to Bottleneck Facilities

Section 5. Definitions

- (1) Any word, phrase or expression used in these rules shall, unless the context requires otherwise or it is expressly defined in these rules, have the same meaning as it has in the Code.
- (2) Headings and titles used in these rules are for reference only and shall not affect the interpretation or construction of these rules.

- (3) References to a word or phrase in the singular encompass references to words or phrases in the plural, and vice versa.
- (4) The terms listed below shall have the following meanings:
- (a) “Access” means the provision of access to a Bottleneck Facility by the First Licensee to a Second Licensee for the purpose of the Second Licensee providing Communications Services;
 - (b) “Affiliate” shall have the meaning set forth in Section 302 (c) of the Code;
 - (c) “Authority” means the Office of the Telecommunication Regulation Authority established under Section 304 of the Code, or its successors;
 - (d) “Bottleneck Facility” shall have the meaning set forth in Section 302 (f) of the Code;
 - (e) “Class License” means an operating license registered in accordance with **Error! Reference source not found.** of the Telecommunications Operating License Rules;
 - (f) “Code” means the Title 21 of the Code of the Federated States of Micronesia, as amended by Public Law No. 18-52;
 - (g) “Co-location” means accommodation of two or more switches, transmission Equipment, antenna or any other Communication Equipment in, or on a single building a tower or any other structure for the purpose of Interconnection or Access;
 - (h) “Consumer” means any Person, other than another Licensee, to whom a Licensee provides a Communications Service;
 - (i) “Control” by a Licensee of a Bottleneck Facility, means the Licensee having the legal right either by virtue of an agreement with the owner or otherwise, to procure the full compliance by the owner of that Bottleneck Facility with these rules;
 - (j) “Communications” means the conveyance from one device to another of any message by means of any wire, radio, optical, electric, magnetic, electromagnetic, or similar system;
 - (k) “Communications Facility” shall have the meaning set forth in Section 302 (h) of the Code
 - (l) “Communications Network” means a system that uses electricity or electromagnetic energy for providing Communications Services between network termination points;
 - (m) “Communications Service” means a service for the transmission of communications by means of a Communications Network;
 - (n) “Days” means calendar days;
 - (o) “Equipment” means any appliance, apparatus, device, or accessory used or intended to be used for Communications purposes;
 - (p) “First Licensee” means a Licensee who is requested to provide Interconnection or Access or any Licensee who is currently providing Interconnection or Access;
 - (q) “FSM” means the Federated States of Micronesia;
 - (r) “Individual License” means an operating license granted in accordance with **Error! Reference source not found.** of the Telecommunications Operating License Rules;
 - (s) “Interconnection” means the physical and logical linking of Communications Networks of different Licensees in order to allow the customers of one Licensee to communicate with

customers of the same or another Licensee, or to access the Communications Services of another Licensee;

- (t) “License” means an Individual or a Class License;
- (u) “Licensee” means a Person who holds a License and is subject to these rules in under Section 4;
- (v) “Person” means a public authority and any association of persons, whether incorporated or not;
- (w) “Point of Interconnection” means a physical or logical point where the Communications Network of one Licensee is connected to the Communications Network of another Licensee for the purpose of Interconnection;
- (x) “Second Licensee” means a Licensee seeking Interconnection or Access with a First Licensee for the purposes of exchanging or routing of traffic.

Chapter II. Process to enter into an interconnection and access agreement

Section 6. Commercial negotiations

- (1) A Licensee shall have the right and the obligation to negotiate an interconnection and access agreement with another Licensee.

Section 7. Negotiation principles for interconnection and access agreements

- (1) Licensees in negotiations for an interconnection and access agreement must:
 - (a) act at all times in good faith;
 - (b) promptly provide information reasonably requested by the other party;
 - (c) avoid obstructing or delaying negotiations;
 - (d) comply with any direction given by the Authority as to the conduct of the negotiations;
 - (e) not seek to cause the other party to withhold from the Authority information concerning the negotiations.

Section 8. Interconnection request

- (1) A Licensee (the First Licensee) shall, on written request from another Licensee (the Second Licensee), promptly negotiate and endeavor to conclude an interconnection and access agreement.
- (2) The written request presented by the Second Licensee shall specify, at a minimum:
 - (a) the specific interconnection and access services requested;
 - (b) a contact person;
 - (c) an estimate of the capacity required; and
 - (d) a time and place for initial negotiations.
- (3) A copy of the request referred to in subsection (1) shall be transmitted to the Authority by the Second Licensee within three (3) days of having submitted it to the First Licensee.

Section 9. Intervention by the Authority

- (1) If Licensees have not entered into an interconnection and access agreement within thirty (30) days of a request made by the Second Licensee in accordance with Section 8, either Licensee may request intervention of the Authority in writing.
- (2) In such case, the Authority shall follow the process described in Chapter III.

Section 10. Publication of interconnection and access agreements

- (1) Within five (5) days of having entered into an interconnection and access agreement, or an amendment to such agreement, Licensees shall lodge a copy of it with the Authority.
- (2) The Authority shall publish copies of all interconnection and access agreements, and amendments to such agreements, on its website.

Chapter III. Interconnection and access dispute resolution process

Section 11. Dispute resolution

- (1) In case of a request filed under Section 9, the Authority may:
 - (a) Determine the terms of the interconnection and access agreement including the terms contemplated by Section 339(1) of the Code and these rules; or
 - (b) Direct the licensees to take specified action to reach an agreement.

Section 12. Determination of interconnection and access agreement by the Authority

- (1) An interconnection and access agreement determined by the Authority shall be made in accordance with Section 340 (2) of the Code.

Section 13. Directions issued by the Authority

- (1) The Authority may direct Licensees to take specified actions to reach an agreement, including:
 - (a) engaging a mediator;
 - (b) engaging an arbitrator;
 - (c) adopting any other action the Authority may consider conducive to the Licensee's reaching an agreement.
- (2) The direction shall be made by written notice to both Licensees and shall, in addition to the specified actions referred to in subsection (1), provide:
 - (a) the timeline and manner for implementation of the direction;
 - (b) the manner in which any costs of implementation of the direction shall be apportioned between the Licensees involved; and
 - (c) any other measure the Authority believes necessary for implementing the direction.
- (3) The Licensees shall comply with directions issued by the Authority in accordance with this section.

Section 14. Consultation with Licensees

- (1) The Authority must provide both Licensees with a draft interconnection and access agreement or a draft direction and consult with both Licensees on that draft, before determining the terms of the interconnection and access agreement or making the direction.
- (2) The Authority shall conduct the consultation referred to in subsection (1) following the process described in Section 321 of the Code.

Section 15. Reconsideration and review

- (1) A Licensee may apply for reconsideration under section 326 of the Code or for a review under section 328 of the Code of the terms of any interconnection and access agreement determined by the Authority that applies to it.

Chapter IV. Standard terms for interconnection and access agreements

Section 16. Interconnection and Access services

- (1) The interconnection and access agreement shall identify the specific Interconnection and Access services being provided by the Licensees under the agreement.

Section 17. Compensation

- (1) The interconnection and access agreement shall provide for compensation arrangements governing the specific interconnection and access services provided.
- (2) Parties to an interconnection and access agreement may enter into any mutually acceptable compensation arrangement consistent with the provisions of Chapter V.

Section 18. Non-discrimination

- (1) The interconnection and access agreement shall provide that the First Licensee shall offer the Second Licensee service conditions and take such other measures necessary to ensure that the services offered pursuant to the interconnection and access agreement are at least equivalent to those the First Licensee provides to itself, its Affiliates, or any other Licensee.

Section 19. Service levels and quality of service

- (1) The interconnection and access agreement shall establish:
 - (a) service level and quality of service guaranteed by each Licensee;
 - (b) coordination measures and procedures for:
 - (i) monitoring service levels and quality of service;
 - (ii) fault identification and clearance;
 - (c) procedures service level and quality of service disputes; and
 - (d) penalties for failure to meet service level and quality of service guarantees.

Section 20. Technical standards

- (1) The interconnection and access agreement shall provide that Licensees must provide Interconnection and Access services and deploy Equipment that comply, prioritized in the following order, with:
 - (a) technical standards made by the Authority for Interconnection of Licensees' Communications Networks under Section 355 (1)(a) of the Code; or
 - (b) technical standards adopted by the International Telecommunication Union (ITU); or
 - (c) technical standards adopted by an official standards-setting body recognized by the Authority or by industry specifications.

Section 21. Billing information

- (1) The interconnection and access agreement shall ensure that the Licensees provide each other such information within their possession that is necessary to allow them to provide accurate and timely billing to each other and to any other Licensee, including but not limited to:
 - (a) billing procedures;
 - (b) payment terms and conditions; and
 - (c) billing and settlement dispute procedures.

Section 22. Prevent harm to Communications Networks

- (1) The interconnection and access agreement shall provide that the Licensees must take all reasonable measures to ensure that Interconnection and Access do not cause physical or technical harm to each Licensees' Communications Network.

Section 23. Treatment of information

- (1) The interconnection and access agreement shall provide that each Licensee must:
 - (a) provide the other Licensee on a timely basis such information, including technical specifications and commercially relevant information, reasonably required for Interconnection and Access and the operation of Communications Services for each Licensee's Consumers;
 - (b) protect from disclosure any:
 - (i) sensitive information as defined in Section 322 (5) of the Code; and
 - (ii) personal information of Consumers,
provided by the other Licensee in the course of negotiating or implementing an interconnection and access agreement; and
 - (c) use information obtain under this section exclusively for the purpose for which it was supplied.

Section 24. Approval from the Authority to suspend or terminate the agreement

- (1) The interconnection and access agreement shall stipulate the specific reasons, if any, justifying unilateral suspension or termination. Such reasons may include:

- (a) material breach of the agreement by one party, including, but not limited to, repeated failure to make payments required under the agreement;
 - (b) insolvency of one of the parties;
 - (c) one party has surrendered its License or has had its License expire, suspended or revoked;
 - (d) continued operation of the agreement would be unlawful; or
 - (e) continued operation of the agreement would pose an imminent threat to life or property.
- (2) The interconnection and access agreement shall provide that, to become effective, the Authority must first approve any unilateral suspension or termination of an agreement.

Section 25. Amendment of agreement

- (1) The interconnection and access agreement shall provide that Licensees must amend the agreement should the Authority:
- (a) establish additional standard terms for interconnection and access agreements in accordance with the Code;
 - (b) modify the standard terms for interconnection and access agreements established in these rules

Section 26. Notification of the agreement to the Authority

- (1) The interconnection and access agreement shall provide that the parties must submit a copy of the agreement to the Authority no later than five (5) days of having entered into such agreement or amended such agreement.

Chapter V. Prices and pricing principles for Interconnection and Access

Section 27. Interconnection pricing approaches

- (1) Licensees shall adopt one of the following approaches to set interconnection prices:
- (a) commercial negotiation
 - (b) cost-based prices; or
 - (c) bill and keep.
- (2) If the Licensees do not reach agreement on Interconnection prices within the timeframe provided under Section 9, and either Licensee requests the Authority's intervention, the Authority:
- (a) shall, in relation to pricing terms for termination services for fixed or mobile voice service, for short messaging service (SMS) and for Internet traffic, apply a bill and keep pricing scheme consistent with Section 30 (2); and
 - (b) may, in relation to all other disputed pricing terms,
 - (i) direct the Licensees to mediation or arbitration and may include in any direction to arbitration a requirement that disputed pricing terms be determined by the arbitrator, or an expert appointed by the arbitrator, on a cost-based price methodology, or

- (ii) determine the pricing dispute itself through the application of a cost-based price methodology, or use such other process or pricing methodology as is open to the Authority under the Code;
- (c) in either case, may either award costs between the parties on such terms as the Authority considers reasonable, including by reference to the reasonableness or otherwise of the parties' conduct during the period provided for commercial negotiation, or include in any direction to an arbitrator guidelines for the awarding of costs between the parties, or use such other process or cost allocation as is open to the Authority under the Code.

Section 28. Commercial negotiation of Interconnection prices

- (1) Licensees may adopt commercially negotiated prices for Interconnection services.
- (2) Commercially negotiated prices shall be reasonable.

Section 29. Cost-based prices for Interconnection services

- (1) Unless otherwise directed by the Authority, cost-based Interconnection prices shall be calculated employing a bottom-up, forward-looking economic cost methodology, whereby:
 - (a) capital assets used to provide Interconnection services shall be valued at the current replacement cost of an asset with the same or better functionality; and
 - (b) costs incurred must reflect technology and product practices based on that of an efficient network architecture.
- (2) Where interconnection prices are calculated using a bottom up, forward-looking economic cost methodology the price of Interconnection services different from termination shall be computed using a long run average incremental cost standard, which shall include:
 - (i) all variable costs; and
 - (ii) such fixed costs directly attributable to the incremental change in the Interconnection service; and
 - (iii) the share of indirect costs that are attributable to the provision of those services.
- (3) Cost-based prices for termination services for fixed and mobile voice services and for short message service (SMS) shall be computed using a long run incremental cost standard, whereby the relevant increment is the termination service and which includes only avoidable costs.
- (4) For avoidance of doubt, in the calculation of prices for termination service:
 - (a) costs related to additional network capacity shall be included only to the extent that they are driven by the need to increase capacity for the purpose of carrying additional wholesale voice termination traffic;
 - (b) spectrum fees shall be excluded from the mobile voice termination increment; and
 - (c) only those wholesale commercial costs shall be included which are directly related to the provision of the wholesale termination service to third parties.
- (5) In this section:
 - (a) "avoidable costs" means the difference between:

- (i) the identified total long run costs of a Licensee providing its full range of Communications Services; and
- (ii) the identified total long run costs of the Licensee providing its full range of Communications Services, except for the wholesale termination service supplied to any third party (which costs exclude non-traffic-related costs).

Section 30. Bill and keep approach

- (1) Licensees may use bill and keep as a pricing scheme for the provision of termination services for fixed and mobile voice services, for short messaging service (SMS) and for Internet traffic.
- (2) Under bill and keep the price for termination services is set equal to zero.

Section 31. Access pricing principles

- (1) Licensees shall adopt one of the following approaches to set prices for Access to Bottleneck Facilities:
 - (a) commercial negotiation;
 - (b) cost-based prices, which may include a reasonable profit to reflect the risk of investment; or
 - (c) retail-minus prices, which may be based on the actual costs that the Licensee will avoid by providing the service on a wholesale, rather than retail basis.
- (2) If the Licensees do not reach agreement on Access prices within the timeframe provided under Section 9, and either Licensee requests the Authority's intervention, the Authority:
 - (a) may direct the Licensees to mediation or arbitration and may include in any direction to arbitration a requirement that disputed pricing terms be determined by the arbitrator, or an expert appointed by the arbitrator, on a cost-based price methodology, or
 - (b) determine the pricing dispute itself through the application of a cost-based price methodology, or use such other process or pricing methodology as is open to the Authority under the Code;
 - (c) in either case, may either award costs between the parties on such terms as the Authority considers reasonable, including by reference to the reasonableness or otherwise of the parties' conduct during the period provided for commercial negotiation, or include in any direction to an arbitrator guidelines for the awarding of costs between the parties, or use such other process or cost allocation as is open to the Authority under the Code.

Section 32. Interconnection and access pricing principles

- (1) Interconnection and access prices shall adhere to the principle of cost-causality, where costs shall be borne by the License whose activities cause those costs to be incurred.
- (2) Interconnection and access prices shall ensure that:
 - (a) non-recurring costs are recovered through non-recurring charges and recurring costs are recovered through recurring charges; and
 - (b) costs that do not vary with usage are recovered through flat charges and costs that vary with usage are recovered through charges that are based on usage.

- (3) Prices for Interconnection and access services shall be sufficiently unbundled so that the Second Licensee is only required to pay for the network elements and services that it requires.

Section 33. Costs of establishing physical interconnection and access

- (1) Unless otherwise directed by the Authority, each Licensee will be responsible for providing and maintaining that part of the interconnection link leading from its network to the Point of Interconnection.
- (2) For a jointly constructed Interconnection link, each Licensee will be responsible for the cost of establishing and maintaining that link based on a reasonable expectation of the link's relative use between the interconnecting parties.

Chapter VI. Designated mandatory services

Section 34. Designated mandatory services

- (1) Pursuant to Section 341(2) of the Code, the Authority designates the following mandatory Interconnection services:
 - (a) Physical and logical interconnection;
 - (b) Basic interconnection services;
 - (c) Co-location; and
 - (d) Ancillary Interconnection services.
- (2) Licensees may agree to include additional services in the interconnection and access agreements they negotiate under Chapter II.

Section 35. Physical and logical interconnection

- (1) The provision of physical and logical Interconnection shall ensure the exchange of Communications traffic between Licensees.
- (2) Licensees shall make the following information publicly available to ensure physical and logical interconnection:
 - (a) a list and description of the Points of Interconnection at which the Second Licensee may physically and logically interconnect with the First Licensee;
 - (b) a description of the physical and logical interfaces to the First Licensee's Communications Network necessary to allow physical and logical interconnection and the procedures if the First Licensee alters such interfaces.
- (3) Licensees shall make publicly available, not less than six (6) months prior to deployment, information on any change in logical or physical interfaces to their Communications Networks that could materially affect existing interconnection and access agreements.
- (4) Interconnection shall occur at any technically feasible Point of Interconnection of the First Licensees Communications Network, including, but not limited to:
 - (a) interconnection gateway switches; and
 - (b) local switches

- (5) Individual Licenses may virtually interconnect with Class Licensees.
- (6) The First Licensee must provide, and may require from the Second Licensee, sufficient capacity to meet forecasted traffic.
- (7) Licensees must provide signaling plans, technical specifications, interconnection test plans and corresponding test schedules.
- (8) In this section making information “publicly available” means a Licensee publishing and keeping such information up-to-date on its website.

Section 36. Basic Interconnection services

- (1) Basic Interconnection services shall include:
 - (a) Origination services allowing one Licensee’s Consumers to use another Licensee’s Communications Network to initiate Communications traffic;
 - (b) Transit services allowing the originating Licensee’s Consumers to route traffic through another Licensee’s (transit provider) Communications Network that terminates on a Network different from the transit provider’s Communications Network; and
 - (c) Termination services allowing the originating Licensee’s Consumer to terminate traffic on the terminating Licensee’s Network, enabling those Consumers to establish one-way or interactive Communications.
- (2) Licensees shall agree the specific basic Interconnection included in an interconnection and access agreement.

Section 37. Co-location

- (1) Licensees must offer to co-locate Equipment at any technically feasible location within their Communications Network.
- (2) Co-location shall include the provision of Equipment space, power, security and site maintenance at each co-location site.
- (3) In cases where physical co-location is not possible due to space limitations or other legitimate reasons, Licensees must take reasonable measures to make available alternative solutions, including but not limited to:
 - (a) providing options for virtual co-location,
 - (b) conditioning additional Equipment space,
 - (c) optimizing the use of existing space; or
 - (d) finding adjacent space.
- (4) Licensees must provide the owners of Equipment co-located in locations within their Communications Networks access to such equipment on a 7-days-a-week, 24-hours-a-day basis, subject to reasonable security precautions.

Section 38. Ancillary services

- (1) Ancillary services include:

- (a) arrangements for the provision of equal access and number portability, where applicable;
- (b) access to services including emergency, free-phone and toll-free numbers, directory assistance and text messaging (SMS) termination services where applicable; and any other services specified by the Authority via written order;
- (c) access to special access services including premium rate services, where applicable; and
- (d) arrangements for measuring traffic and billing.

Chapter VII. Access to Bottleneck Facilities

Section 39. Access to Bottleneck Facilities

- (1) The First Licensee shall agree to, and take all reasonable steps required to give effect to, reasonable requests for Access to, and use of, Bottleneck Facilities it owns or Controls.
- (2) A Licensee may only refuse to grant Access to Bottleneck Facilities it owns or Controls in accordance with Section 42.
- (3) A Licensee who proposes to give Access to Bottleneck Facilities it owns or Controls on unreasonable terms and conditions shall be deemed to be in breach of its obligation under subsection (1)

Section 40. Duty to reject discriminatory preferences

- (1) A Licensee shall not accept or request Access to Bottleneck Facilities and related services that are owned or under the Control of:
 - (a) a Person unrelated to the Licensee; or
 - (b) an Affiliates to that Licensee,on prices, terms and conditions that are not available to other Licensees.

Section 41. Duty to abstain from undue influence

- (1) A Licensee shall not engage, directly or indirectly, in any conduct, action or omission to influence, in any manner:
 - (a) a Person unrelated to the Licensee; or
 - (b) an Affiliate to that Licensee,to refuse granting Access to Bottleneck Facilities such Person or Affiliate may own or Control.

Section 42. Refusal to grant Access

- (1) Where the First Licensee refuses to grant Access to Bottleneck Facilities it owns or Controls on grounds of technical, economic, or legal infeasibility, such claims shall be subject to independent verification by the Authority on a case-by-case basis following a request made in accordance with Section 9.
- (2) Technical infeasibility may exist if:
 - (a) the provision of Access materially adversely affects security, performance or efficiency of the First Licensee's Communications Network; or

- (b) there is space limitation on the Bottleneck Facility that cannot be resolved by the First Licensee through optimizing the use of existing space or other reasonable measures.
- (3) The Authority may direct the First Licensee to produce any records and documents in connection with its refusal to grant an Access request and the Authority or its authorized personnel may enter premises to inspect the relevant facilities to determine the reasonableness of the refusal of Access.

Section 43. Reservation of Capacity on Bottleneck Facilities

- (1) Licensees shall have the right to reserve capacity on Bottleneck Facilities they own and for which they have made long term investments, provided this reservation does not adversely affect competition.
- (2) Where a Licensee reserves capacity on Bottleneck Facilities it owns:
 - (a) the reservation period shall not exceed two (2) years after which the right will cease from being operational; and
 - (b) capacity reserved shall not exceed 20% of spare capacity on the specific Bottleneck Facility.
- (3) Information and documentary evidence of the reservation and extent thereof must be held by the Licensee and shall be made available to the Authority upon request.

Chapter VIII. Sharing of new Communications Facilities

Section 44. Deployment of new Communications Facilities

- (1) A Licensee that proposes to construct a new Communications Facility to expand its Communications Network shall comply with the sharing requirements set forth in Section 342 of the Code.
- (2) In case the parties to a sharing negotiation are unable to reach an agreement and the Authority is requested to issue a direction under Section 342 (5) of the Code, the Authority shall follow Section 13 and 14, as applicable.

Section 45. Access to and use of land

- (1) A party to a sharing agreement reached in accordance with Section 44 shall have the right to access and use land in the terms and condition described in Section 371 of the Code.

Schedule 1
Designation of Bottleneck Facilities

Section 1. Bottleneck Facilities to which Access must be granted

- (1) The following facilities are identified as Bottleneck Facilities in accordance with Section 302 (f) of the Code:
- (a) towers and other supporting constructions for the provisions of radio communications services;
 - (b) poles, masts, ducts, conduits, inspection chambers, manholes, and cabinets; and
 - (c) submarine cable landing stations.

Section 2. Identification of additional Bottleneck Facilities

- (1) The Authority may amend the list of Bottleneck Facilities identified in this Schedule or identify additional Bottleneck Facilities by written order issued following a consultation pursuant to Section 321 of the Code.