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CHAPTER TS

TELECOMMUNICATIONS SERVICES

Article TS.1

Scope

1. This Chapter sets out principles of the regulatory framework for the provision of telecommunications networks and services, liberalized pursuant to Chapters [CBTS] and [Investment], and shall apply to measures by a Party affecting trade in public telecommunication services.
2. For greater certainty, this Chapter shall not apply to measures affecting services providing, or exercising editorial control over, content transmitted using telecommunications networks or services.

Article TS.2

Definitions

For the purpose of this Chapter:

1. "**associated facilities**" means those services, physical infrastructures and other facilities associated with a telecommunications network and/or service which enable and/or support the provision of services via that network and/or service or have the potential to do so;
2. "**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;
3. "**essential facilities**" mean facilities of a public telecommunications network or service that:
 - a) are exclusively or predominantly provided by a single or limited number of suppliers;
 - and
 - b) cannot feasibly be economically or technically substituted in order to provide a service;
4. "**interconnection**" means linking the networks of suppliers providing public telecommunications services in order to allow the users of one supplier to communicate with

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users of another supplier and to access services provided by another supplier. Services may be provided by the suppliers involved or any other supplier who has access to the network;

5. “**intra-corporate communications**” means telecommunications through which a company communicates within the company or with or among its subsidiaries, branches and, subject to a Party’s domestic laws and regulations, affiliates. For these purposes, “subsidiaries”, “branches” and, where applicable, “affiliates” shall be as defined by each Party. “Intra-corporate communications” in this Chapter excludes commercial or non-commercial services that are supplied to companies that are not related subsidiaries, branches or affiliates, or that are offered to customers or potential customers;
5. “**leased circuits**” means telecommunications services or facilities, including those of a virtual or non-physical nature, between two or more designated points that are set aside for the dedicated use of, or availability to, a user;
6. “**license**” means any authorization that a Party may require of a legal entity or natural person, in accordance with its laws and regulations, in order to offer a telecommunications service, including but not limited to concessions, permits, registrations or notifications;
7. “**major supplier**” means a supplier of telecommunications networks or services which has the ability to materially affect the terms of participation (having regard to price and supply) in a relevant market for public telecommunications networks or services as a result of control over essential facilities or the use of its position in that market;
8. “**network element**” means a facility or equipment used in supplying a public telecommunications service, including features, functions and capabilities provided by means of that facility or equipment;
9. “**non-discriminatory**” means most-favoured-nation and national treatment as defined in [articles XX and YY], as well as according treatment no less favourable than that accorded to any other user of like public telecommunications services in like situations, including with respect to timeliness;
10. “**number portability**” means the ability of end-users of public telecommunications services who so request to retain, at the same location in the case of a fixed line, the same telephone numbers when switching between the same category of suppliers of public telecommunications services.
11. “**public telecommunications network**” means any telecommunications network used for the provision of public telecommunications services between network termination points;

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12. “**public telecommunications service**” means any telecommunications service that is offered to the public generally;
13. “**reference interconnection offer**” means an interconnection offer by a major supplier that is made publicly available, so that any supplier of public telecommunications services that is willing to accept it may obtain interconnection with the major supplier on that basis;
14. “**telecommunications**” means the transmission and reception of signals by any electromagnetic means;
15. “**telecommunications network**” means transmission systems and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the transmission and reception of signals by wire, radio, optical, or other electromagnetic means;
16. “**telecommunications regulatory authority**” means the body or bodies responsible for the regulation of telecommunications networks and services covered by this Chapter;
17. “**telecommunications service**” means a service which consists wholly or mainly in the transmission and reception of signals over telecommunications networks, including over networks used for broadcasting. Telecommunications services exclude services providing, or exercising editorial control over, content transmitted using telecommunications networks and services;
18. “**universal service**” means the minimum set of services that must be made available to all users in the territory of a Party, the scope of which is defined by that Party.
19. “**user**” means a service consumer or a service supplier using a public telecommunications network or service.

Article TS.3

Telecommunications Regulatory Authority

1. Each Party shall ensure that its telecommunications regulatory body is legally distinct from, and functionally independent to any supplier of public telecommunications networks, equipment and services. With a view to ensuring the independence and impartiality of telecommunications regulatory bodies, each Party shall ensure that its telecommunications regulatory body does not hold a financial interest or maintain an operating or management role in any supplier of public telecommunications services, networks or equipment. A Party that retains ownership or control of suppliers of telecommunications networks or services

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shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.

2. Each Party shall ensure that regulatory decisions and procedures of its telecommunications regulatory body or other competent authority, related to provisions contained in this Chapter, are impartial with respect to all market participants.
3. The telecommunications regulatory authority shall act independently and shall not seek or take instructions from any other body in relation to the exercise of the tasks assigned to it under national law to enforce the obligations set out in [Articles TS.5 [Interconnection], TS.6 [Access and use], TS.7 [Resolution of Telecommunications disputes], TS.9 [Interconnection with Major Suppliers] and TS.10 [Access to Major Suppliers' Essential Facilities] of this chapter.]
4. Each Party shall ensure that the telecommunications regulatory authority has the regulatory power, as well as adequate financial and human resources, to carry out the tasks assigned to it to enforce the obligations set out in this chapter. Such power shall be exercised transparently and in a timely manner. The tasks to be undertaken by a regulatory authority shall be made public in an easily accessible and clear form, in particular where those tasks are assigned to more than one body.
5. Each Party shall provide its telecommunications regulatory authority with the power to ensure that suppliers of telecommunications networks or services provide it, promptly upon request, with all the information, including financial information, which is necessary to enable the telecommunications regulatory authority to carry out its tasks in accordance with this chapter. Information requested shall be treated in accordance with the requirements of confidentiality.
6. Each Party shall ensure that a user or supplier of telecommunications networks or services affected by a decision of the telecommunications regulatory authority has the right to appeal against that decision to an appeal body that is independent of the telecommunications regulatory authority and of the parties affected by the decision¹. Pending the outcome of the appeal, the decision of the telecommunications regulatory authority shall stand, unless interim measures are granted in accordance with national law.

¹ For Mexico, the general rules, acts or omissions of the Federal Telecommunications Institute may only be challenged through an indirect *amparo* trial before federal courts specialized in competition, broadcasting and telecommunications and shall not be subject to suspension order.

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Article TS 4 Licensing Procedures

1. When a Party requires a supplier of public telecommunications networks or services to have a license, the Party shall ensure the public availability of:
 - a) types of services requiring licenses;
 - b) all the licensing criteria and procedures it applies;
 - c) a reasonable period of time it normally requires to reach a decision concerning an application for a license if a decision is required; and
 - d) terms and conditions generally applicable to a license.
2. When a Party requires a supplier of public telecommunications networks or services to have a license, the Party shall decide upon the granting of the license within a reasonable period of time so as to allow the supplier to start providing its networks or services without undue delay.
3. Any licensing criteria, applicable procedures and, if imposed, any obligations or conditions, shall be related to the services provided, objective, proportionate, transparent and non-discriminatory.
4. Each Party shall ensure that an applicant or a licensee receives, as a procedural requirement or upon request, the written reasons for:
 - a) denial of a license;
 - b) imposition of supplier-specific conditions or obligations on a license;
 - c) revocation of the license; or
 - d) refusal to renew a license.
5. Administration fees imposed on suppliers, if any; shall be objective, transparent, non-discriminatory and proportionate to the administrative costs reasonably incurred in the management, control and enforcement of the obligations set out in this chapter.²

Article TS.5 Interconnection

Each Party shall ensure that a supplier of public telecommunications networks or services has the right and, when requested by another supplier of public telecommunications networks or services,

² Administrative fees do not include payments for rights to use scarce resources and mandated contributions to universal service provision.

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the obligation to negotiate interconnection for the purpose of providing public telecommunications networks or services.

Article TS.6

Access to and Use of Public Telecommunications Networks and Services

1. Each Party shall ensure that any service supplier of the other Party is accorded access to and use of public telecommunications networks or services, including leased circuits, offered in its territory or across its borders on reasonable and non-discriminatory terms and conditions, for the supply of a service liberalized pursuant to Chapters [CBTS] and [Investment]. This obligation shall be applied, inter alia, through paragraphs 2 through 6 of this Article.
2. Each Party shall ensure that service suppliers of the other Party are permitted:
 - a) to purchase or lease and attach terminal or other equipment which interfaces with a public telecommunications network;
 - b) to provide services to individual or multiple end-users over leased or owned circuits;
 - c) to connect private leased or owned circuits with public telecommunications networks and services or with circuits leased or owned by another service supplier; and
 - d) to use operating protocols of the service supplier's choice in the supply of any service, other than as necessary to ensure the availability of telecommunications services to the public generally.
3. Each Party shall ensure that service suppliers of the other Party may use public telecommunications networks and services for the movement of information in its territory or across its borders, including for intra-corporate communications of such service suppliers, and for access to information contained in data bases 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 ensure the security and confidentiality of communications, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a 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 and services other than as necessary:
 - a) to safeguard the public service responsibilities of suppliers of public telecommunications networks or services, in particular their ability to make their services available to the public generally; or
 - b) to protect the technical integrity of public telecommunications networks or services;

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6. Provided that they satisfy the criteria set out in paragraph 5, conditions for access to and use of public telecommunications transport networks and services may include:
 - a) restrictions on resale or shared use of such services;
 - b) a requirement to use specified technical interfaces, including interface protocols, for inter-connection with such networks and services;
 - c) requirements, where necessary, for the inter-operability of such services and to encourage the achievement of the goals set out in article 18 (International Standards and Organisations);
 - d) type approval of terminal or other equipment which interfaces with the network and technical requirements relating to the attachment of such equipment to such networks;
 - e) restrictions on inter-connection of private leased or owned circuits with such networks or services or with circuits leased or owned by another service supplier; or
 - f) notification, registration and licensing.

Article TS.7

Resolution of Telecommunications Disputes

1. Each Party shall ensure that, in the event of a dispute arising between suppliers of telecommunications networks or services in connection with rights and obligations that arise from this chapter, and at the request of either party involved in the dispute, the telecommunications regulatory authority issues a binding decision within a timeframe stipulated in the legal framework of the Party to resolve the dispute.
2. The decision issued by the telecommunications regulatory authority shall be made available to the public, having regard to the requirements of business confidentiality. The parties concerned shall be given a full statement of the reasons on which it is based and shall have the right to appeal this decision, according to Article TS.3, paragraph 6 of this chapter.
3. The procedure referred to in paragraphs 1 and 2 of this Article shall not preclude either party concerned from bringing an action before the courts³.

³ For Mexico, the general rules, acts or omissions of the Federal Telecommunications Institute may only be challenged through an indirect *amparo* trial before federal courts specialized in competition, broadcasting and telecommunications and shall not be subject to suspension order.

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Article TS.8 Competitive Safeguards on Major Suppliers

1. Each Party shall introduce or maintain appropriate measures for the purpose of preventing suppliers of public telecommunications networks or services that, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.
2. The anticompetitive practices referred to in paragraph 1 include in particular:
 - (a) engaging in anti-competitive cross-subsidisation;
 - (b) using information obtained from competitors with anti-competitive results; and
 - (c) not making available to other services suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

Article TS.9 Interconnection with Major Suppliers

1. Each Party shall ensure that a major supplier of public telecommunications networks and services in its territory provides interconnection to suppliers of public telecommunications services of the other Party
 - a) at any technically feasible point in the major supplier's network;
 - b) under non-discriminatory terms and conditions (including as regards rates, technical standards, specifications, quality and maintenance) and of a quality no less favourable than that provided for the own like services of such major supplier, or for like services of its subsidiaries or other affiliates;
 - c) in a timely fashion, and on terms, conditions (including technical standards and specifications) and rates⁴ that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the suppliers do not need to pay for network components or facilities that they do not require for the service to be provided; and
 - d) upon 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.
2. Major suppliers shall make publicly available, as appropriate, either:

⁴ Nothing in this paragraph shall preclude a Party from requiring that a major supplier provides interconnection at cost-oriented rates. Cost-oriented means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services.

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- a) a reference interconnection offer or another standard interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications services; or
 - b) the terms and conditions of an interconnection agreement in effect.
3. Each Party shall make publicly available the applicable procedures for interconnection negotiations with a major supplier in its territory.

Article TS.10

Access to Essential Facilities

1. Each Party shall ensure that a major supplier in its territory grants access to its essential facilities to suppliers of public telecommunications networks or services on reasonable, transparent and non-discriminatory terms and conditions based on a generally available offer for the purpose of providing public telecommunications services, except when this is not necessary to achieve effective competition on the basis of the facts collected and the assessment of market conditions conducted by the telecommunications regulatory authority. The major supplier's essential facilities may include, *inter alia*, network elements, leased circuits services and associated facilities.
2. Each Party shall provide its telecommunications regulatory body with the authority to determine those essential facilities required to be made available in a major supplier's territory, and to what extent those essential facilities are to be unbundled. Such determination shall be based, *inter alia*, on the objective of achieving effective competition and the benefit of the long-term interest of end-users.
3. Where a Party requires a major supplier to offer its public telecommunications services for resale, the Party shall ensure that that supplier does not impose unreasonable or discriminatory conditions on the resale of its public telecommunications services.

Article TS.11

Scarce Resources

1. Each Party shall ensure that the allocation and granting of rights of use of scarce resources, including radio spectrum, numbers and rights of way, is carried out in an open, objective, timely, transparent, non-discriminatory and proportionate manner and in pursuit of general interest objectives, including the promotion of competition. Procedures, and conditions and obligations attached to rights of use, shall be based on objective, transparent, non-discriminatory and proportionate criteria.

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2. The current use of allocated frequency bands shall be made publicly available, but detailed identification of radio spectrum allocated for specific government uses is not required.
3. Parties may rely on market-based approaches, such as bidding procedures, to assign spectrum for commercial use.
4. A Party's measures allocating and assigning spectrum and managing frequency are not measures that are per se inconsistent with Article [...] (market access). Accordingly, each Party retains the right to establish and apply spectrum and frequency management measures that may have the effect of limiting the number of suppliers of telecommunications services, provided that it does so in a manner consistent with other provisions of this Agreement. This includes the ability to allocate frequency bands taking into account current and future needs and spectrum availability.

Article TS.12 Number Portability

Each Party shall ensure that suppliers of public telecommunications services provide number portability on a timely basis, without impairment of quality, reliability or convenience, and on reasonable and non-discriminatory terms and conditions.

Article TS.13 Universal Service

1. Each Party has the right to define the kind of universal service obligation it wishes to maintain.
2. Each Party shall administer any universal service obligation that it maintains in a manner that is transparent, non-discriminatory and neutral with respect to competition. Each Party shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined. Universal service obligations defined according to these principles will not be regarded per se as anticompetitive.
3. Each Party shall ensure that procedures for the designation of universal service suppliers are open to all suppliers of public telecommunications networks or services. The designation shall be made through an efficient, transparent and non-discriminatory mechanism.
4. Where a Party decides to compensate the universal services suppliers, it shall ensure that such compensation does not exceed the needs directly attributable to the universal services obligation, as determined through a competitive process or a determination of net costs.

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Article TS.14

Confidentiality of Information

1. Each Party shall ensure that suppliers of public telecommunications networks or services that acquire information from another such supplier in the process of negotiating arrangements pursuant to Articles TS.5 (Interconnection), TS.9 (Interconnection with Major Suppliers) or TS.10 (Access to Essential Facilities) of this chapter use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of that information when it is transmitted or stored.
2. Each Party shall ensure the confidentiality of telecommunications and related traffic data transmitted in the use of public telecommunications networks or services, subject to the requirement that measures applied to that end do not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

Article TS.15

Technological Neutrality

The Parties recognise the benefits of technological neutrality, in particular in terms of allowing suppliers of public telecommunications services to choose the technologies they desire to use to supply their services subject to requirements necessary to satisfy legitimate public policy interests, provided that any measure restricting such choice does not create unnecessary obstacles to trade.

Article TS.16

Treatment by Major Suppliers

Each Party shall provide its telecommunications regulatory authority with the power to require, where appropriate, that a major supplier in its territory accords suppliers of public telecommunications networks or services of the other Party treatment no less favourable than such major supplier accords in like circumstances to its subsidiaries or its affiliates, regarding:

- a) the availability, provisioning, rates or quality of like telecommunications services; and
- b) the availability of technical interfaces necessary for interconnection.

Article TS.17

International Mobile Roaming

1. The Parties shall endeavour to cooperate on promoting transparent and reasonable rates for international mobile roaming services in ways that can help promote the growth of trade among the Parties and enhance consumer welfare.

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2. Parties may choose to take steps to enhance transparency and competition with respect to international mobile roaming rates and technological alternatives to roaming services, such as:
 - a) ensuring that information regarding retail rates is easily accessible to consumers; and
 - b) minimising impediments to the use of technological alternatives to roaming, whereby consumers visiting the territory of a Party from the territories of other Parties can access telecommunications services using the device of their choice.

Article TS.18.

International Standards and Organisations

The Parties recognize the importance of international standards for global compatibility and interoperability of telecommunications networks or services and undertake to promote those standards through the work of relevant international bodies including the International Telecommunication Union and the International Organization for Standardization.