

Draft Regulations on International electronic communications access to essential facilities at Cable Landing Stations

Explanatory Memorandum – East Caribbean Telecommunications Authority (ECTEL)

This summary is intended to provide a brief, readable overview of the selected sections of this draft regulation and is not intended to be comprehensive or definitive. Readers are strongly advised to read the full regulation for a complete understanding of all its provisions. In this summary, Licensee means a person (generally a company) holding a license to provide electronic communications services; Commission means the National Telecommunications Regulatory Commission in each ECTEL country; “electronic communications” is used instead “telecommunications services”.

Objective and Scope of application (See regulations 3 & 4)

- ▶ The objective of the Cable Landing Stations (Access) Regulations is to set out conditions for fair access at reasonable prices to international bandwidth in order to support the development of a competitive electronic communication market in ECTEL countries and significant reductions in international communication charges
- ▶ This regulation applies to every Licensee operating submarine cable landing stations (“**CLS Licenses**”) in ECTEL countries for any cable landing station which it operates.

Access Obligations (See regulations 5, 11 & 17)

- ▶ CLS Licensees must:
 - give access to their Cable Landing Station
 - give access to the bandwidth available at the Cable Landing Station
 - provide a backhaul circuit between the CLS and the premises of the Operator requesting access if it is technically feasible to do so ;
 - provide colocation services

Transparency Obligations (See regulations 6 à 8)

- ▶ Every CLS Licensee must submit to the Commission for prior approval and publish a document containing the terms and conditions of access facilitation and co-location services, (the “**CLS Reference Interconnection and Access Offer**”).
- ▶ The Commission must ensure that the CLS Reference Interconnection and Access Offer complies with the Act and these Regulations and has the power to impose modifications if needed.

- ▶ CLS Licensees must publish the CLS Reference Interconnection and Access Offer on their website and make available printed copies if requested by operators requesting access.

Cable Landing Station Agreements (See PART 3, regulations 9 to 16)

- ▶ Regulations 9 and 10 specify under what conditions and deadlines an operator seeking access shall make its demand and receive an answer from the CLS Licensee. The CLS Licensee must substantiate and communicate in writing to the applicant and the Commission any refusal to provide access.
- ▶ The Access (facilitation) Agreement must be submitted to the Commission for its prior approval before it can enter into force. The Commission may require modifications if needed.

Provision of Backhaul Circuit (See regulation 11)

- ▶ The CLS Licensee requested to provide access to international submarine cable capacity and to cable landing station facilities must also provide a backhaul circuit (i.e. a leased line) between the CLS and a requesting operator's premises if it is technically feasible to do so.
- ▶ If the operator seeking for access has arranged the provision of backhaul circuit by another service provider, the CLS Operator shall facilitate the interconnection at the Cable Landing Station between the operator seeking for access and the other provider.

Guarantees of Service Quality Levels (See regulation 14)

- ▶ The CLS Reference Interconnection and Access Offer of each CLS Licensee must contain: conditions regarding standard quality of services that are provided and enhanced quality of other service options; and reasonable response times to requests for supply of services and resources.
- ▶ The access agreement to be concluded must include level of commitment, associated service incentive mechanisms and compliance; and penalties in case of default.

Increase in Capacity and Requirement Termination or Discontinuance of Access (See regulations 15 & 16)

- ▶ Regulation 15 provides that the CLS licensee shall, subject to technical feasibility, facilitate the provision of additional capacity upon the request of an operator already benefiting of capacity at its Cable Landing Station.
- ▶ Regulation 16 specifies the conditions under which the CLS Licensee can terminate the access facilitation agreement

Colocation (See Part 4 - Regulations 17 to 22)

- ▶ Regulation 17 provides that every operator who makes an application to access international submarine cable capacity on a submarine cable system may make, simultaneously, another application to the CLS Licensee for co-location at the CLS.
- ▶ A refusal of the requested co-location by the CLS Licensee must be duly substantiated and communicated in writing to the applicant and the Commission within the same period of ten days of receipt of the application.
- ▶ The co-location agreement must be submitted to the Commission for its prior approval before entering in force and the Commission is entitled to require modifications if need be.
- ▶ If the CLS Licensee is unable to offer, due to space limitations or any other valid reason, the physical co-location requested it shall take reasonable measures to give an option of virtual co-location to the operator seeking for access (See regulation 18).
- ▶ In any case, the operator benefiting from access must have the right to access the equipment co-located at the CLS or at a virtual co-location point (See regulation 20).
- ▶ Regulation 22 specifies the conditions under which the CLS Licensee can terminate the colocation agreement, in particular:
 - The CLS Licensee shall provide a minimum period for co-location
 - The Commission must ensure that the minimum period of commitment is not less than three years and the co-location offer can be extended beyond the initial period.

Tariffs (See regulations 13, 21 and 23)

- ▶ Charges for access facilitation, capacity, co-location, backhaul circuit and related operation and maintenance fees must be calculated in accordance with the principle of cost orientation and the cost accounting methods defined by the Commission upon the recommendation of ECTEL.
- ▶ In submitting the CLS Reference Interconnection and Access Offer for approval to the Commission, CLS Licensees must set out the details of cost for each network element, costing methodology and calculation sheets or any other element for calculation.
- ▶ If a CLS Licensee does not provide required documentation to help determine costs that are payable, the Commission may estimate costs on the basis of information available to it and may set the charges to be paid by operators requesting access.
- ▶ If the Commission and ECTEL lack sufficient information or have not yet implemented the cost accounting methods noted above, the Commission may, upon the recommendation of ECTEL and in a transitional manner, determine the tariffs of the charges to be paid using international benchmarks.
- ▶ The Commission, upon the recommendation of ECTEL, shall impose on offers by CLS Licensees the rates which it has determined in accordance under the above methodologies.

Dispute resolution (See regulation 24)

- ▶ Where there is a dispute involving the conclusion, the execution or the termination of an agreement related to access facilitation, including the provision of capacity, co-location services or the provision of backhaul circuit between a CLS Licensee and another operator one or both of the parties may submit a dispute to the Commission.
- ▶ The Commission may refer the matter to ECTEL for an opinion; or with the agreement of the parties, refer the matter to ECTEL for mediation.
- ▶ If an ECTEL led mediation fails, any of the parties to the dispute may file a petition with the Commission to resolve the dispute under the rules set out in the Dispute Regulations, the Interconnection Regulations and any other relevant law.