

CHAPTER THIRTEEN
TELECOMMUNICATIONS

ARTICLE 13.1: SCOPE AND COVERAGE

1. This Chapter applies to:
 - (a) measures relating to access to and use of public telecommunications services;
 - (b) measures relating to obligations of suppliers of public telecommunications services, including major suppliers;
 - (c) other measures relating to public telecommunications networks or services; and
 - (d) measures relating to the provision of value-added 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 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 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 adopting or enforcing new or existing telecommunications laws or regulations that are not inconsistent with this Chapter.

ARTICLE 13.2: ACCESS TO AND USE OF PUBLIC TELECOMMUNICATIONS SERVICES

1. Each Party shall ensure that service suppliers 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 service suppliers of the other Party are permitted to:¹
 - (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 circuits;
 - (c) connect owned² 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 service supplier;
 - (d) perform switching, signaling, processing, and conversion functions; and
 - (e) use operating protocols of their choice in the supply of any service, other than as necessary to ensure the availability of telecommunications transport networks and services to the public generally.
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

¹ For Morocco, subparagraphs (b) through (e) apply only to service suppliers in its territory classified as suppliers of public telecommunications services or suppliers of value-added services.

² In Morocco, only a licensed telecommunications supplier is permitted to own circuits.

- (b) protect the privacy of non-public personal data of subscribers to public telecommunications services,

provided 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 transport networks and services, other than as necessary to:

- (a) safeguard the public service responsibilities of suppliers of public telecommunications transport networks and services, in particular their ability to make their networks or services available to the public generally;
- (b) protect the technical integrity of public telecommunications transport networks or services; or
- (c) ensure that service suppliers of the other Party do not supply services unless permitted pursuant to commitments in this Agreement.

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) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks and services;
- (b) requirements, where necessary, for the inter-operability of such services;
- (c) type approval of terminal or other equipment that interfaces with the network and technical requirements relating to the attachment of such equipment to such networks;
- (d) restrictions on interconnection of private leased or owned circuits with such networks or services or with circuits leased or owned by another service supplier; or
- (e) notification, registration, and licensing.

ARTICLE 13.3: OBLIGATIONS RELATING TO SUPPLIERS OF PUBLIC TELECOMMUNICATIONS

SERVICES³

Interconnection

1. (a) Each Party shall ensure that suppliers of public telecommunications services in its territory provide, directly or indirectly,⁴ interconnection with the suppliers of public telecommunications services of the other Party within the same territory.
- (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 obtained as a result of interconnection arrangements and only use such information for the purpose of providing these services.

Resale

2. Each Party shall ensure that suppliers of public telecommunications services in its territory do not impose unreasonable or discriminatory conditions or limitations on the resale of these services.⁵

Number Portability

3. Each Party shall ensure that suppliers of public telecommunications services in its territory provide number portability to the extent technically feasible, and on reasonable terms and conditions.⁶

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

³ This Article is subject to Annex 13-A.

⁴ For Morocco, indirect interconnection means through another supplier of public telecommunications services in the same territory.

⁵ For Morocco, resale is offered on a commercial basis, subject to commercially negotiated terms and conditions.

⁶ Paragraph 3 shall apply to Morocco when it implements pending regulations.

other Party.

ARTICLE 13.4: ADDITIONAL OBLIGATIONS RELATING TO MAJOR SUPPLIERS OF PUBLIC TELECOMMUNICATIONS SERVICES⁷

Treatment by Major Suppliers

1. Each Party shall ensure that major suppliers in its territory accord suppliers of public telecommunications services of the other Party treatment no less favorable than such major suppliers accord to their subsidiaries, their 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 that, alone or together, are a major supplier in its territory from engaging in or continuing anticompetitive practices.
- (b) The anticompetitive practices referred to in subparagraph (a) include in particular:
- (i) engaging in anticompetitive 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 that are necessary for them to provide services.

Unbundling of Network Elements

⁷ This Article is subject to Annex 13-B.

3. 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 and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent for the supply of public telecommunications services.⁸

Interconnection

4. (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 suppliers need not pay for network components or facilities that they do not require for the service to be provided; and
- (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

⁸ Paragraph 3 shall apply to Morocco when it implements pending regulations.

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 existing interconnection agreement or through negotiation of a new interconnection agreement.

(c) Public Availability of Interconnection Offers

Each Party shall require major suppliers in its territory to make publicly available reference interconnection offers or other standard interconnection offers containing the rates, terms, and conditions that the major suppliers offer generally to suppliers of public telecommunications services.

(d) Public Availability of 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.⁹

⁹ In the United States, this obligation may be satisfied by requiring filing with a state regulatory authority.

- (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

- 5. (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 and 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 capacity-based, cost-oriented prices.

Co-location

- 6. (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 and 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,on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent.
- (c) Each Party may determine through its law or regulations which premises are subject to subparagraphs (a) and (b).

Access to Rights-of-Way

7. Each Party shall endeavor to 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 and conditions, and at rates, that are reasonable and non-discriminatory.

ARTICLE 13.5: SUBMARINE CABLE SYSTEMS AND SATELLITE SERVICES

1. Each Party shall ensure that any enterprise that it authorizes to operate a submarine cable system in its territory as a public telecommunications service accords reasonable and non-discriminatory treatment with respect to access to that system (including landing facilities) to suppliers of public telecommunications services of the other Party.

2. Each Party shall ensure that any enterprise that it authorizes to provide satellite services in its territory as a public telecommunications service accords reasonable and non-discriminatory treatment with respect to access to those services by suppliers of public telecommunications services of the other Party.

ARTICLE 13.6: CONDITIONS FOR THE SUPPLY OF VALUE-ADDED SERVICES

1. Neither Party may require an enterprise in its territory that it classifies as a supplier of value-added services and that supplies those services over facilities that it does not own to:

- (a) supply those services to the public generally;
- (b) cost-justify its rates for those services;
- (c) file a tariff for those services;
- (d) interconnect its networks with any particular customer for the supply of those 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 paragraph 1 to remedy a practice of a supplier of value-added services that the Party has found in a particular case to be anticompetitive under its law or regulations, or to otherwise promote competition or safeguard the interests of consumers.

ARTICLE 13.7: INDEPENDENT REGULATORY BODIES AND PRIVATIZATION

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. Each Party shall maintain the absence of or eliminate as soon as feasible national government ownership in any supplier of public telecommunications services. Where a Party has an ownership interest in a supplier of public telecommunications services and intends to reduce or eliminate its interest, it shall notify the other Party of its intention as soon as possible.

ARTICLE 13.8: UNIVERSAL SERVICE

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: LICENSING PROCESS

1. When a Party requires a supplier of public telecommunications services to have a license, the Party shall make publicly available:
 - (a) all the licensing criteria and procedures it applies;
 - (b) the time it normally requires to reach a decision concerning an application for a license; and
 - (c) the terms and conditions of all licenses it has issued.
2. Each Party shall ensure that, on request, an applicant receives the reasons for its denial of a license.

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. Decisions on allocating and assigning spectrum and 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 exercise its spectrum and frequency management policies, which may affect the number of suppliers of public telecommunications services, provided that this is done in a manner that is consistent with the provisions of this Agreement. The Parties also retain the right to allocate frequency bands taking into account existing and future needs and spectrum availability.

ARTICLE 13.11: ENFORCEMENT

Each Party shall provide its competent authority with the authority to 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.

ARTICLE 13.12: RESOLUTION OF TELECOMMUNICATIONS DISPUTES

Further to Articles 18.3 (Administrative Proceedings) and 18.4 (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 of the Party to resolve disputes regarding the Party's measures relating to a matter set out in Articles 13.2 through 13.5.

- (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 specified period after the supplier requests interconnection, by its telecommunications regulatory body¹⁰ 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 its telecommunications regulatory body may petition the body to reconsider that determination or decision. Neither Party may permit such a petition to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body unless an appropriate authority stays the determination or decision.

Judicial Review

- (c) Any enterprise that is aggrieved or whose interests are adversely affected by a determination or decision of its telecommunications regulatory body may obtain judicial review of the determination or decision by an impartial and independent judicial authority.

ARTICLE 13.13: TRANSPARENCY

Further to Article 18.1 (Publication), each Party shall ensure that:

- (a) rulemakings, including the basis for such rules, of its telecommunications regulatory body and end-user tariffs filed with its telecommunications regulatory body are promptly published or otherwise made available to all interested persons;
- (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 measures relating to:
 - (i) tariffs and other terms and conditions of service;
 - (ii) procedures relating to judicial and other adjudicatory proceedings;

¹⁰ The United States may comply with this obligation by providing for review by a state regulatory authority.

- (iii) specifications of technical interfaces;
- (iv) conditions for attaching terminal or other equipment to the public telecommunications network; and
- (v) notification, permit, registration, or licensing requirements, if any.

ARTICLE 13.14: FLEXIBILITY IN THE CHOICE OF TECHNOLOGIES

Neither Party may prevent suppliers of public telecommunications services from choosing the technologies that they use to supply their services, including commercial mobile wireless services, except that a Party shall be free to establish and apply spectrum and frequency management policies and other measures necessary to satisfy legitimate public policy interests, such as a requirement to comply with technical specifications and national frequency tables.

ARTICLE 13.15: FORBEARANCE

The Parties recognize the importance of relying on market forces to provide wide choices 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 the regulation is not necessary to prevent unreasonable or discriminatory practices;
- (b) enforcement of the 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:

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

co-location (virtual) means the ability to lease and control equipment of a major supplier of public telecommunications services for the purpose of interconnecting with that supplier or accessing its unbundled network elements;

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

cost-oriented means based on cost, and may include a reasonable profit, 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 which public telecommunications service supplier the end-user chooses;

end-user means a final consumer of or final subscriber to a public telecommunications service;

enterprise means an enterprise as defined in Article 1.3 (Definitions), and a branch of an enterprise;

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;

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 facilities between designated terminating points of a public telecommunications network leased to a user by a supplier of public telecommunications services, excluding any switching functionality controlled by the user;

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 that 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, existing telephone numbers without impairment of quality, reliability, or convenience when switching between the same category of suppliers of 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. Public telecommunications services in the territory of the United States do not include value-added services;

reference interconnection offer means an interconnection offer extended by a major supplier and filed with or approved by a telecommunications regulatory body¹¹ 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;

supplier of public telecommunications services means any supplier of public telecommunications services;¹²

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;

user means a service consumer or a service supplier; and

¹¹ For purposes of applying this definition with respect to the United States, this body may be a state regulatory authority.

¹² For greater certainty, suppliers of public telecommunications services in the territory of Morocco are subject to the licensing regime of *Dahir* No. 24-96, Law for Posts and Telecommunications.

value-added services means services that add value to telecommunications services through enhanced functionality. With respect to the United States, these are services as defined in 47 U.S.C. § 153 (20). With respect to Morocco, these are services as defined in *Dahir* No. 24-96, Law for Posts and Telecommunications.¹³

¹³ Suppliers of value-added services in the territory of Morocco are subject to Morocco's declaration regime.

ANNEX 13-A

For purposes of this Chapter, paragraphs 2 through 4 of Article 13.3 do not apply to the United States with respect to suppliers of commercial mobile services. In addition, a state regulatory authority of 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.

ANNEX 13-B

1. Article 13.4 does not apply to the United States with respect to a rural telephone company, as defined in section 3(37) of the Communications Act of 1934, as amended, unless a state regulatory authority orders that the requirements described in that Article be applied to the company. In addition, a state regulatory authority 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 Article 13.4.
2. For purposes of this Chapter, Article 13.4 does not apply to the United States with respect to suppliers of commercial mobile services.