

CHAPTER 13

TELECOMMUNICATIONS¹

ARTICLE 13.1: SCOPE

1. This Chapter shall apply to:
 - (a) measures adopted or maintained by a Party relating to access to and use of public telecommunications services;
 - (b) measures adopted or maintained by a Party relating to obligations of suppliers of public telecommunications services;
 - (c) other measures adopted or maintained by a Party relating to public telecommunications networks or services; and
 - (d) measures adopted or maintained by a Party relating to the supply of information services.
2. Except to ensure that an enterprise operating a broadcast station or cable system has continued access to and use of public telecommunications services, this Chapter shall not apply to any measure adopted or maintained by a Party relating to broadcast or cable distribution of radio or television programming.
3. Nothing in this Chapter shall be construed to:
 - (a) require a Party, or require a Party to compel any enterprise, to establish, construct, acquire, lease, operate, or provide telecommunications networks or services not offered to the public generally;
 - (b) require a Party to compel any enterprise exclusively engaged in the broadcast or cable distribution of radio or television programming to make available its broadcast or cable facilities as a public telecommunications network; or
 - (c) prevent a Party from prohibiting persons operating private networks from using their private networks to supply public telecommunications networks or services to third persons.

ARTICLE 13.2: ACCESS AND USE OF PUBLIC TELECOMMUNICATIONS NETWORKS AND SERVICES²

¹ In place of the obligations established in this Chapter, Costa Rica shall undertake the obligations set out in Annex 13-C.

² For greater certainty, Article 13.2 shall not prevent a Party from requiring a license, authorization or other

1. Each Party shall ensure that service suppliers of the other Party have access to and use of any public telecommunications network or 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:

- (a) purchase or lease and attach terminal or other equipment that interfaces with a public telecommunications network;
- (b) provide services to individual or multiple end-users over leased or owned circuits;
- (c) connect owned or leased circuits with public telecommunications networks and services or with circuits leased or owned by another enterprise;
- (d) perform switching, signaling, processing, and conversion functions; and
- (e) use operating protocols of their choice in the supply of any service.

3. Each Party shall ensure that service suppliers of the other Party may use public telecommunications services for the movement of information in its territory or across its borders, including for intra-corporate communications, 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 ensure the security and confidentiality of messages, or 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 networks and services, other than as necessary to:

- (a) safeguard the public service responsibilities of suppliers of public telecommunications networks and services, in particular their ability to make their networks or services available to the public generally; or
- (b) protect the technical integrity of public telecommunications networks or services.

6. Provided that conditions for access to and use of public telecommunications networks

type of authorization to an enterprise to provide any public telecommunications network or service in its territory.

and services satisfy the criteria set out in paragraph 5, such conditions may include:

- (a) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks or services;
- (b) requirements, where necessary, for the inter-operability of such networks and services;
- (c) type approval of terminal or other equipment that interfaces with the network and technical requirements relating to the attachment of that equipment to such networks; and
- (d) a licensing, permit, registration, or notification procedure which, if adopted or maintained, is transparent and provides for the processing of applications filed thereunder in accordance with the Party's laws or regulations.

ARTICLE 13.3: OBLIGATIONS RELATING TO SUPPLIERS OF PUBLIC TELECOMMUNICATIONS SERVICES

Interconnection

1.
 - (a) Each Party shall ensure that suppliers of public telecommunications services in its territory provide, directly, or indirectly within the same territory, interconnection with suppliers of public telecommunications services of the other Party.
 - (b) In carrying out subparagraph (a), each Party shall ensure that suppliers of public telecommunications services in its territory take reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end-users of public telecommunications services obtained as a result of interconnection arrangements and only use such information for the purposes of providing these services.
 - (c) Each Party shall provide its telecommunications regulatory body the authority to require suppliers of public telecommunications services to file their interconnection contracts.

Number Portability

2. 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^{3 4}.

*Dialing Parity and Access to Telephone Numbers*⁵

3. Each Party shall ensure that:

- (a) suppliers of public telecommunications services in its territory provide dialing parity within the same category of service to suppliers of public telecommunications services of the other Party; and
- (b) suppliers of public telecommunications services of the other Party in the Party's territory are afforded non-discriminatory access to telephone numbers.

ARTICLE 13.4: TREATMENT BY MAJOR SUPPLIERS

Each Party shall ensure that a major supplier in its territory accords suppliers of public telecommunications services of the other Party treatment no less favorable than such major supplier accords to itself, its subsidiaries, its affiliates, or non-affiliated service suppliers regarding:

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

ARTICLE 13.5: COMPETITIVE SAFEGUARDS

1. Each Party shall maintain appropriate measures for the purposes of preventing suppliers of public telecommunications services that, alone or together, are a major supplier in its territory from engaging in or continuing anticompetitive practices.

2. The anticompetitive practices referred to in paragraph 1 include in particular:

- (a) engaging in anticompetitive cross-subsidization;
- (b) using information obtained from competitors with anticompetitive results; and

³ Paragraph 2 shall not apply with respect to suppliers of voice over internet protocol services. For Nicaragua and Korea, in any case, number portability will only be possible between networks providing the same category of services.

⁴ In complying with this paragraph, the Parties may take into account the economic feasibility of providing number portability for fixed telephony.

⁵ Article 13.3.3(a) shall not apply with respect to suppliers of international public telecommunications services.

- (c) 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 public telecommunications services.

ARTICLE 13.6: RESALE

Each Party shall ensure that a major supplier in its territory does not impose unreasonable or discriminatory conditions or limitations on the resale of its public telecommunications services⁶.

ARTICLE 13.7: UNBUNDLING OF NETWORK ELEMENTS

1. Each Party shall provide its telecommunications regulatory body the authority to require a major supplier 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.
2. Each Party may determine the network elements required to be made available in its territory, and the suppliers that may obtain such elements, in accordance with its laws and regulations.

ARTICLE 13.8: INTERCONNECTION

General Terms and Conditions

1. Each Party shall ensure that a major supplier in its territory provides interconnection for the facilities and equipment of 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, conditions (including technical standards and specifications), and rates;
 - (c) of a quality no less favorable than that provided by the major supplier for its own like services, for like services of non-affiliated service suppliers, or for its subsidiaries or other affiliates;

⁶ Where provided in its laws or regulations, a Party may prohibit a reseller that obtains, at wholesale rate, a public telecommunications service available at retail to only a limited category of subscribers from offering the service to a different category of subscribers.

- (d) in a timely fashion, and on terms and conditions (including technical standards and specifications), and at cost-oriented rates, that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the suppliers need not pay for network components or facilities that they do not require for the service to be provided; and
- (e) 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.

Options for Interconnecting with Major Suppliers

2. Each Party shall ensure that a major supplier in its territory provides suppliers of public telecommunications services of the other Party the opportunity to interconnect their facilities and equipment with those of the major supplier through:

- (a) negotiation of a new interconnection agreement;
- (b) a reference interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications services; or
- (c) the terms and conditions of an interconnection agreement in force.

Public Availability of Interconnection Offers and Agreements

3. If a major supplier in the territory of a Party has a reference interconnection offer, the Party shall require the offer to be made publicly available.

4. Each Party shall make publicly available the applicable procedures for interconnection negotiations with a major supplier in its territory.

5. Each Party shall require a major supplier in its territory to file all interconnection agreements to which it is party with its telecommunications regulatory body.

6. Each Party shall make publicly available interconnection agreements in force between a major supplier in its territory and other suppliers of public telecommunications services in its territory.

ARTICLE 13.9: PROVISIONING AND PRICING OF LEASED CIRCUITS SERVICES⁷

1. Each Party shall ensure that a major supplier in its territory provides enterprises of the other Party leased circuits services that are public telecommunications services on terms

⁷ Article 13.9 shall not be construed to require a Party to ensure that the major supplier provides leased circuits as an unbundled network element.

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

2. In carrying out paragraph 1, each Party shall provide its telecommunications regulatory body the authority to require a major supplier in its territory to offer leased circuits services that are public telecommunications services to enterprises of the other Party at capacity-based, flat rate, cost-oriented prices.

ARTICLE 13.10: CO-LOCATION

1. Subject to paragraphs 2 and 3, each Party shall ensure that a major supplier in its territory provides to suppliers of public telecommunications services of the other Party in the Party's territory physical co-location of equipment necessary for interconnection or access to unbundled network elements on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent.

2. Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall ensure that a major supplier in its territory provides an alternative solution on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent.

3. Each Party may limit which premises are subject to paragraphs 1 and 2, provided the Party specifies any such limitation in its law or regulations.

ARTICLE 13.11: ACCESS TO POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY⁸

Each Party shall ensure that a major supplier in its territory affords access to poles, ducts, conduits, and rights-of-way owned or controlled by the major supplier to suppliers of public telecommunications services of the other Party in the Party's territory on terms and conditions, and at rates, that are reasonable, non-discriminatory, and transparent.

ARTICLE 13.12: SUBMARINE CABLE SYSTEMS

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

ARTICLE 13.13: CONDITIONS FOR THE SUPPLY OF INFORMATION SERVICES

⁸ Each Party shall implement this obligation only for land lines.

1. Neither Party may require an enterprise in its territory that it classifies⁹ as a supplier of information services and that supplies those services over facilities that the enterprise 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) connect its networks with any particular customer for the supply of those services; or
- (e) conform with any particular standard or technical regulation of the telecommunications regulatory body for connecting to any other network, other than 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 information 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 13.14: INDEPENDENT REGULATORY BODIES¹⁰

Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of public telecommunications 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 such supplier. Each Party shall ensure that regulatory decisions and procedures, of its telecommunications regulatory body are impartial with the respect to all market participants.

ARTICLE 13.15: UNIVERSAL SERVICE

1. Each Party has the right to define the kind of universal service obligation it wishes to adopt or maintain.

2. Such obligations shall not be considered anticompetitive *per se*, provided they are administered in a transparent, non-discriminatory, and competitively neutral manner and the Party shall ensure that its universal service obligation is not more burdensome than necessary

⁹ For the purposes of applying this provision, each Party may, through its telecommunications regulatory body, classify which services in its territory are information services.

¹⁰ El Salvador, Honduras, Nicaragua and Panama shall endeavor to ensure that their telecommunications regulatory body has adequate resources to carry out its functions.

for the kind of universal service that it has defined.

ARTICLE 13.16: LICENSES AND OTHER AUTHORIZATIONS

1. When a Party requires a supplier of public telecommunications services to have a license or other authorization¹¹ the Party shall make publicly available:

- (a) all applicable licensing or authorization criteria and procedures it applies;
- (b) the period it normally requires to reach a decision concerning an application for a license or other authorization; and
- (c) the terms and conditions of all licenses or authorizations in effect.

2. Each Party shall ensure that, on request, an applicant receives the reasons for the denial of a license or other authorization.

ARTICLE 13.17: 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 retains the right not to provide detailed identification of frequencies allocated or assigned for specific government uses.

3. A Party's measures allocating and assigning spectrum and managing frequency are not measures that are *per se* inconsistent with Article 10.4 (Market Access) either as it applies to cross-border trade in services or through the operation of Article 10.1.3 (Scope) to an investor or covered investment of the other Party. 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 public telecommunications services. This includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.

ARTICLE 13.18: 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 13.12. That authority shall include the ability to impose sanctions or other measures which may include financial

¹¹ For the purposes of this Chapter, the term authorization is understood to include concessions, permits, registrations, or other authorizations that the Party may require to supply public telecommunications services.

penalties, injunctive relief (on an interim or final basis), corrective orders, or the modification, suspension, or revocation of licenses or other authorizations.

ARTICLE 13.19: RESOLUTION OF TELECOMMUNICATIONS DISPUTES

Further to Articles 18.3 (Administrative Proceedings) and 18.4 (Review and Appeal), each Party shall ensure that:

Recourse

- (a) (i) enterprises of the other Party may have recourse in accordance with the procedures established in the legislation to a telecommunications regulatory body or other relevant body of the Party to resolve disputes regarding the Party's measures relating to matters set out in Articles 13.2 through 13.12; and
- (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 body to resolve disputes regarding the terms, conditions, and rates for interconnection with that major supplier;

*Judicial Review*¹²

- (b) any enterprise whose legally protected interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may obtain review of the determination or decision by an impartial and independent judicial authority of the Party.

ARTICLE 13.20: TRANSPARENCY

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

- (a) rulemakings, including the basis for such rulemakings, of its telecommunications regulatory body and end-user tariffs filed with its telecommunications regulatory body are promptly published or otherwise made publicly available;
- (b) interested persons are provided with adequate advance public notice of, and reasonable opportunity to comment on, any rulemaking that its

¹² For greater certainty, in accordance with its legislation, a Party may require the exhaustion of administrative remedies before request the judicial review.

telecommunications regulatory body proposes;

- (c) to the extent practicable, all comments filed to the telecommunications regulatory body in the rulemaking are made publicly available; and
- (d) its measures relating to public telecommunications services are made publicly available, including:
 - (i) measures relating to:
 - (A) tariffs and other terms and conditions of service;
 - (B) specifications of technical interfaces;
 - (C) conditions for attaching terminal or other equipment to the public telecommunications network; and
 - (D) notification, permit, registration, or licensing requirements, if any; and
 - (ii) procedures relating to judicial and other adjudicatory proceedings.

ARTICLE 13.21: MEASURES CONCERNING TECHNOLOGIES AND STANDARDS

Neither Party may prevent suppliers of public telecommunications services from having the flexibility to choose the technologies that they use to supply their services, including commercial mobile wireless services, subject to requirements necessary to satisfy legitimate public policy interests¹³.

ARTICLE 13.22: RELATION 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 13.23: DEFINITIONS

For the purposes of this Chapter:

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

¹³ For Panama, for greater certainty, nothing in this Chapter shall be construed to prevent a telecommunications regulatory body from requiring the proper license or other authorization to supply each public telecommunications service.

cost-oriented means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services in accordance with the legislation of the Party;

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 services supplier the end-user chooses;

end-user means a final consumer of or subscriber to a public telecommunications service, including a service supplier other than a supplier of public telecommunications services;

enterprise means an enterprise as defined in Article 1.6 (Definitions) and includes a branch of an enterprise;

essential facilities means 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 supply a service;

information service means

- (a) for Korea, value-added services that add value to telecommunications services through enhanced functionality, and specifically means those services as defined in subparagraph 12 of Article 2 of the *Telecommunications Business Act*; and
- (b) for El Salvador, Honduras, Nicaragua, and Panama, the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service;

interconnection means linking with suppliers providing public telecommunications services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;

leased circuits means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to a particular customer or other users of the customer's choosing;

major supplier means a supplier of public telecommunications services that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for public telecommunications services as a result of:

- (a) control over essential facilities; or
- (b) use of its position in the market;

network element means a facility or equipment used in supplying a public telecommunications service, including features, functions, and capabilities provided by means of that facility or equipment;

non-discriminatory means treatment no less favorable than that accorded to any other user of like public telecommunications networks or services in like circumstances;

number portability means the ability of end-users of public telecommunications services to retain, at the same location, the same telephone numbers without impairment of quality, reliability or convenience when switching between the same category of suppliers of public telecommunications services;

physical co-location means physical access to space in order to install, maintain, or repair equipment, at premises owned or controlled and used by a supplier to provide 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, and excludes information services;

reference interconnection offer means an interconnection offer extended by a major supplier and filed with or approved by a telecommunications regulatory body that sufficiently details the terms, rates, and conditions for interconnection such that a supplier of public telecommunications services that is willing to accept it may obtain interconnection with the major supplier on that basis;

telecommunications means the transmission and reception of signals by any electromagnetic means;

telecommunications regulatory body means a national body responsible for the regulation of telecommunications; and

user means an end user or a supplier of public telecommunications services.

ANNEX 13-A
ADDITIONAL OBLIGATIONS RELATING TO MAJOR SUPPLIERS

Section A: Korea

1. Articles 13.7, 13.8.1 (a), 13.8.1 (e), 13.8.2 (a), 13.10 and 13.11 shall not apply to Korea with respect to non-facilities-based suppliers of public telecommunications services.
2. With respect to Articles 13.8.1 (b), 13.8.1 (c), 13.8.1 (d) and 13.9, Korea may permit major suppliers to offer rates, terms, and conditions to non-facilities-based suppliers of public telecommunications services that are less favorable than those offered to facilities-based suppliers of public telecommunications services. For greater certainty, Korea shall ensure that a non-facilities-based supplier of public telecommunications services may have recourse, as provided in Article 13.19, to the telecommunications regulatory body regarding disputes over such rates, terms, and conditions.
3. Consistent with Article 5.3 of the *Telecommunications Business Act*, a “non-facilities-based supplier” is a licensed supplier of public telecommunications services that does not own wire or wireless lines or other transmission facilities, but may own a switch, router, or multiplexer, and supplies its public telecommunications services through transmission facilities of a licensed facilities-based supplier.
4. Articles 13.4, 13.6, and 13.7 and Articles 13.9 through 13.11 shall not apply to Korea with respect to suppliers of commercial mobile services.

Section B: Republics of Central America

1. Articles 13.7, 13.8.1 (a), 13.8.1 (e), 13.8.2 (a), 13.10, and 13.11 shall not apply to El Salvador, Honduras and Nicaragua with respect to non-facilities-based suppliers of public telecommunications services¹⁴.

2. With respect to Articles 13.8.1 (b), 13.8.1 (c), 13.8.1 (d) and 13.9, Honduras and Nicaragua may permit major suppliers to offer rates, terms, and conditions to non-facilities-based suppliers of public telecommunications services that are less favorable than those offered to facilities-based suppliers of public telecommunications services. For greater certainty, Honduras and Nicaragua shall ensure that a non-facilities-based supplier of public telecommunications services may have recourse, as provided in Article 13.19, to the telecommunications regulatory body regarding disputes over such rates, terms, and conditions.

3. Articles 13.4, 13.6, 13.7, 13.9, 13.10, and 13.11 shall not apply to El Salvador, Honduras, Nicaragua and Panama with respect to suppliers of commercial mobile services.

4. For Nicaragua, Articles 13.3.2, 13.3.3, 13.5, and 13.8, shall not apply with respect to suppliers of commercial mobile services.

5. For Panama, Articles 13.5 and 13.8 shall apply with respect to suppliers of commercial mobile services which are defined as dominant suppliers. Also, these Articles do not affect any rights and obligations a Party may have under GATS and nothing in these Articles shall be construed to prevent a Party from imposing the requirements set out in these Articles on suppliers of commercial mobile services.

¹⁴ For Nicaragua, a **non-facilities-based supplier** is a licensed supplier of public telecommunications services that does not own wire or wireless lines or other transmission facilities, but may own a switch, router, or multiplexer, and supplies its public telecommunications services through transmission facilities of a licensed facilities-based supplier.

ANNEX 13-B
RURAL SERVICES

Nicaragua may designate and exempt a rural telephone company in its territory from Articles 13.3.2, 13.3.3 and 13.4 through 13.11, provided that the rural telephone company supplies public telecommunications services to fewer than two percent of the subscriber lines installed in the Party's territory. The number of subscriber lines supplied by a rural telephone company includes all subscriber lines supplied by the company, and by its owners, subsidiaries, and affiliates.

ANNEX 13-C
TELECOMMUNICATIONS SERVICES – OBLIGATIONS APPLICABLE
TO COSTA RICA

ARTICLE 1: SCOPE¹⁵

1. This Annex shall apply to:
 - (a) measures adopted or maintained by Costa Rica relating to access to and use of public telecommunications networks and services;
 - (b) measures adopted or maintained by Costa Rica relating to obligations of suppliers of public telecommunications networks and services¹⁶; and
 - (c) other measures adopted or maintained by Costa Rica relating to public telecommunications networks and services.
2. Except to ensure that an enterprise operating a broadcast station or cable system has continued access to and use of public telecommunications services, this Annex shall not apply to any measure adopted or maintained by Costa Rica relating to broadcast or cable distribution of radio or television programming.
3. Nothing in this Annex shall be construed to:
 - (a) require Costa Rica, or require Costa Rica to compel any enterprise, to establish, construct, acquire, lease, operate, or provide telecommunications networks or services not offered to the public generally;
 - (b) require Costa Rica 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 Costa Rica from prohibiting persons operating private networks from using their private networks to supply public telecommunications networks or services to third persons.

ARTICLE 2: ACCESS AND USE OF PUBLIC TELECOMMUNICATIONS NETWORKS AND SERVICES¹⁷

¹⁵ For greater certainty, this Annex does not create market access rights or obligations.

¹⁶ Supplier of public telecommunications networks shall be understood as an “operator,” of public telecommunications networks; which means a natural or juridical person, public or private, that operates public telecommunication networks with the proper authorization, and that may or not provide telecommunications services available to the public.

¹⁷ For greater certainty, Article 2 does not prevent Costa Rica from requiring a license, authorization or other type of authorization to an enterprise to provide any public telecommunications network or service in its territory.

1. Costa Rica shall ensure that service suppliers of the other Party have 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, including as set out in paragraphs 2 through 6.
2. Costa Rica shall ensure that service suppliers of the other Party are permitted to:
 - (a) purchase or lease and attach terminal or other equipment that interfaces with a public telecommunications network;
 - (b) provide services to individual or multiple end-users over leased or owned circuits;
 - (c) connect owned or leased circuits with public telecommunications networks and services or with circuits leased or owned by another enterprise;
 - (d) perform switching, signaling, processing, and conversion functions; and
 - (e) use operating protocols of their choice in the supply of any service.
3. Costa Rica shall ensure that service suppliers of the other Party may use public telecommunications services for the movement of information in its territory or across its borders, including for intra-corporate communications, 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, Costa Rica may take such measures as are necessary to ensure the security and confidentiality of messages, or 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. Costa Rica shall ensure that no condition is imposed on access to and use of public telecommunications networks and services, other than as necessary to:
 - (a) safeguard the public service responsibilities of suppliers of public telecommunications networks and services, in particular their ability to make their networks or services available to the public generally; or
 - (b) protect the technical integrity of public telecommunications networks or services.
6. Provided that conditions for access to and use of public telecommunications networks and services satisfy the criteria set out in paragraph 5, such conditions may include:
 - (a) a requirement to use specified technical interfaces, including interface

protocols, for interconnection with such networks or services;

- (b) requirements, where necessary, for the inter-operability of such networks and services;
- (c) type approval of terminal or other equipment that interfaces with the network and technical requirements relating to the attachment of that equipment to such networks;
- (d) a licensing, permit, registration, or notification procedure which, if adopted or maintained, is transparent and provides for the processing of applications filed thereunder in accordance with Costa Rica's laws or regulations; and
- (e) restrictions to connect owned or leased circuits with public telecommunications networks and services or with circuits leased or owned by another enterprise.

ARTICLE 3: INTERCONNECTION

1.
 - (a) Costa Rica shall ensure that suppliers of public telecommunications services in its territory provide, directly, or indirectly within the same territory, interconnection with suppliers of public telecommunications services of the other Party in any economically and technically feasible point.
 - (b) In carrying out subparagraph (a), Costa Rica 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 purposes of providing these services.
 - (c) Costa Rica shall provide its telecommunications regulatory body the authority to require suppliers of public telecommunications services to file their interconnection contracts.

Interconnection obligations relating to major suppliers of public telecommunications services

2. Costa Rica shall ensure that a major supplier in its territory provides interconnection for the facilities and equipment of suppliers of public telecommunications services of the other Party:
 - (a) at any economically and technically feasible point in the major supplier's network;
 - (b) under non-discriminatory terms, conditions (including technical standards

and specifications), and rates;

- (c) of a quality no less favorable than that provided by the major supplier for its own like services, for like services of non-affiliated service suppliers, or for its subsidiaries or other affiliates;
- (d) in a timely fashion, and on terms and conditions (including technical standards and specifications), and at cost-oriented rates, that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the suppliers need not pay for network components or facilities that they do not require for the service to be provided; and
- (e) 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.

Options for Interconnecting with Major Suppliers

3. Costa Rica shall ensure that a major supplier in its territory provides suppliers of public telecommunications services of the other Party the opportunity to interconnect their facilities and equipment with those of the major supplier through:

- (a) negotiation of a new interconnection agreement;
- (b) a reference interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications services; or
- (c) the terms and conditions of an interconnection agreement in force.

Public Availability of Interconnection Offers and Agreements

4. If a major supplier in the territory of Costa Rica has a reference interconnection offer, Costa Rica shall require the offer to be made publicly available.

5. Costa Rica shall make publicly available the applicable procedures for interconnection negotiations with a major supplier in its territory.

6. Costa Rica shall require a major supplier in its territory to file all interconnection agreements to which it is party with its telecommunications regulatory body.

7. Costa Rica shall make publicly available interconnection agreements in force between a major supplier in its territory and other suppliers of public telecommunications services in its territory.

ARTICLE 4: COMPETITIVE SAFEGUARDS

1. Costa Rica shall maintain appropriate measures for the purposes of preventing suppliers of public telecommunications services that, alone or together, are a major supplier in its territory from engaging in or continuing anticompetitive practices.

2. The anticompetitive practices referred to in paragraph 1 include in particular:

- (a) engaging in anticompetitive cross-subsidization;
- (b) using information obtained from competitors with anticompetitive results; and
- (c) 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 public telecommunications services.¹⁸

ARTICLE 5: SUBMARINE CABLE SYSTEMS

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

ARTICLE 6: CONDITIONS FOR THE SUPPLY OF INFORMATION SERVICES

1. Costa Rica may not require an enterprise of the other Party in its territory that it classifies¹⁹ as a supplier of information services and that supplies such services over facilities that the enterprise does not own to:

- (a) supply such services to the public generally;
- (b) cost-justify its rates for such services;
- (c) file tariffs for such services;
- (d) connect its networks with any particular customer for the supply of those services; or

¹⁸ This information may not be provided as long as it is an industrial, commercial, or economic secret according to the applicable legislation.

¹⁹ The telecommunications regulatory body will have the competence within its territory to classify the services included in the information services category.

- (e) conform to any particular standard or technical regulation for interconnection other than that for interconnection to a public telecommunications network.
- 2. Notwithstanding paragraph 1, Costa Rica may take any action referred to in paragraph 1 to remedy a practice of a supplier of information services that it has found in a particular case to be anti-competitive under its law or regulations, or to otherwise promote competition or safeguard the interests of consumers.

ARTICLE 7: INDEPENDENT REGULATORY BODIES

- 1. Costa Rica shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of public telecommunications services.
- 2. With a view to ensuring the independence and impartiality of telecommunications regulatory bodies, Costa Rica shall ensure that its telecommunications regulatory body does not hold a financial interest or maintain an operating or management role in any such supplier.
- 3. Costa Rica shall ensure that regulatory decisions and procedures of its telecommunications regulatory body are impartial with the respect to all market participants.

ARTICLE 8: UNIVERSAL SERVICE

- 1. Costa Rica has the right to define the kind of universal service obligations it wishes to adopt or maintain.
- 2. Such obligations shall not be considered anticompetitive *per se*, provided they are administered in a transparent, non-discriminatory, and competitively neutral manner and Costa Rica shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined.

ARTICLE 9: LICENSES AND OTHER AUTHORIZATIONS

- 1. When Costa Rica requires a supplier of public telecommunications services to have a license or other authorization²⁰, Costa Rica shall make publicly available:
 - (a) all the licensing or authorization criteria and procedures it applies;
 - (b) the period it normally requires to reach a decision concerning an application for a license or other authorization; and
 - (c) the terms and conditions of all licenses or authorizations in effect.

²⁰ For the purposes of this Annex, the term authorization is understood to include concessions, permits, registrations, or other authorizations that Costa Rica may require to supply public telecommunications services.

2. Costa Rica shall ensure that, on request, an applicant receives the reasons for the denial of a license or other authorization.

ARTICLE 10: ALLOCATION AND USE OF SCARCE RESOURCES

1. Costa Rica 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. Costa Rica shall make publicly available the current state of allocated frequency bands, but retains the right not to provide detailed identification of frequencies allocated or assigned for specific government uses.
3. Costa Rica's measures allocating and assigning spectrum and managing frequency are not measures that are *per se* inconsistent with Article 10.4 (Market Access) either as it applies to cross-border trade in services or through the operation of Article 10.1.3 (Scope) to an investor or covered investment of the other Party. Accordingly, Costa Rica retains the right to establish and apply spectrum and frequency management measures that may have the effect of limiting the number of suppliers of public telecommunications services. This includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.

ARTICLE 11: ENFORCEMENT

Costa Rica shall provide its competent authority with the authority to enforce Costa Rica's measures relating to the obligations set out in Articles 2, 3, 4, and 7 of this Annex. That authority shall include the ability to impose sanctions or other measures which may include financial penalties, injunctive relief (on an interim or final basis), corrective orders, or the modification, suspension, or revocation of licenses or other authorizations.

ARTICLE 12: RESOLUTION OF TELECOMMUNICATIONS DOMESTIC DISPUTES BETWEEN SUPPLIERS

Disputes between suppliers of public telecommunications networks or services

Further to Articles 18.3 (Administrative Proceedings) and 18.4 (Review and Appeal), Costa Rica shall ensure that:

Recourse

- (a) (i) a supplier of public telecommunications networks or services of the other Party established in Costa Rica may have recourse, in accordance with the procedures established in its legislation, to its

telecommunications regulatory body to resolve disputes regarding Costa Rica's measures relating to matters set out in Articles 2, 3 and 4 of this Annex; and

- (ii) a supplier of public telecommunications networks or services of the other Party established in Costa Rica that has requested interconnection with a major supplier in Costa Rica's territory may seek review, within a reasonable and publicly specified period after the supplier requests interconnection, by its telecommunications regulatory body to resolve disputes regarding the terms, conditions, and rates for interconnection with that major supplier;

Judicial Review

- (b) a supplier of public telecommunications networks or services of the other Party established in Costa Rica whose legally protected interests are adversely affected by a determination or decision of Costa Rica's telecommunications regulatory body may obtain review of the determination or decision by an impartial and independent judicial authority of Costa Rica²¹.

ARTICLE 13: TRANSPARENCY

1. Further to Article 18.1 (Publication), Costa Rica shall ensure that its measures relating to public telecommunications networks and services are made publicly available, including:

- (a) measures relating to:
 - (i) tariffs and other terms and conditions of service;
 - (ii) specifications of technical interfaces;
 - (iii) conditions for attaching terminal or other equipment to the public telecommunications network; and
 - (iv) notification, permit, registration, or licensing requirements, if any; and
- (b) procedures relating to judicial and other adjudicatory proceedings.

2. Further to Article 18.1 (Publication), Costa Rica shall endeavor to:

- (a) publish or otherwise make publicly available rulemakings of its telecommunications regulatory body and end-user tariffs filed with its telecommunications regulatory body; and

²¹ For greater certainty, it is understood that this review does not go beyond the obligations established in Article 18.4 (Review and Appeal).

- (b) provide suppliers of public telecommunications networks or services of the other Party established in Costa Rica with advance public notice of, and opportunity to comment on, any rulemaking that its telecommunications regulatory body proposes.

ARTICLE 14: FLEXIBILITY IN THE CHOICE OF TECHNOLOGIES

Costa Rica may not prevent suppliers of public telecommunications services from having the flexibility to choose the technologies that they use to supply their services, subject to requirements necessary to satisfy legitimate public policy interests.

ARTICLE 15: RELATION TO OTHER CHAPTERS

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

ARTICLE 16: DEFINITIONS

For the purposes of this Annex:

cost-oriented means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;

end-user means a final consumer of or subscriber to a public telecommunications service, including a service supplier other than a supplier of public telecommunications services;

enterprise means an enterprise as defined in Article 1.4 (Definitions) and includes a branch of an enterprise;

essential facilities means 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 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 telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to a particular customer or other

users of the customer's choosing;

major supplier means a supplier of public telecommunications services that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for public telecommunications services as a result of:

- (a) control over essential facilities; or
- (b) use of its position in the market;

public telecommunications network means telecommunications infrastructure used to provide public telecommunications services between and among defined network termination points;

public telecommunications service or telecommunications services available to the public means any telecommunications service that Costa Rica requires, explicitly or in effect, to be offered to the public generally in accordance with its legislation, involving the real time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information;

reference interconnection offer means an interconnection offer extended by a major supplier and filed with or approved by a telecommunications regulatory body that sufficiently details the terms, rates, and conditions for interconnection such that a supplier of public telecommunications services that is willing to accept it may obtain interconnection with the major supplier on that basis;

telecommunications means the transmission and reception of signals by any electromagnetic means;

telecommunications regulatory body means the Costa Rica's body responsible for the regulation of telecommunications; and

user means an end-user or a supplier of public telecommunications services.