



A Consultative Document

Draft Telecommunications Regulations (Pricing)

Maintenance History		
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1 Introduction

Pursuant to Section 29 of The Telecommunications Act ("The Act"), the Telecommunications Authority of Trinidad and Tobago ("the Authority") may regulate the prices of telecommunications services under certain market conditions. In particular, as outlined in Section 29 (2) of the Act, the Authority may "...establish price regulation regimes, which may include setting, reviewing and approving prices, in any case where-

- (a) there is only one concessionaire operating a public telecommunications network or providing a public telecommunications service, or where one concessionaire has a dominant position in the relevant market;
- (b) a concessionaire operating a public telecommunications network or providing a public telecommunications service cross-subsidies another telecommunications service provided by such concessionaire; or
- (c) the Authority detects anti-competitive pricing or acts of unfair competition.”

These draft regulations will establish the regime which is detailed in the *Proposed Price Regulation Framework for Telecommunications Services*¹.

1.1 Review Cycle

As the telecommunications sector grows and develops into more efficient and competitive markets the need will arise to revise and update the type of price regulation regime that is employed by the Authority. And as such, this document will be modified in consultation with concessionaires, stakeholders, interested parties and the public, as the Authority deems appropriate. The maintenance history will be modified accordingly.

¹ The Authority is also currently inviting comments on this document.

1.2 Consultation Process

The Authority is seeking the views and opinions of the general public and other stakeholders on the draft Telecommunications (Pricing) Regulations in accordance with the Authority's *Procedure for Consultation in the Telecommunications Sector of Trinidad and Tobago*.

The Authority's consultation procedures and comment submission form are available on the Authority's website, <http://www.tatt.org.tt>. Comments should be submitted on or before **Wednesday 10th January 2007** to legal@tatt.org.tt or mailed to:

Telecommunications Authority of Trinidad and Tobago
BEN Court, 76 Boundary Road
San Juan

2 Draft Telecommunications (Pricing) Regulations

REPUBLIC OF TRINIDAD AND TOBAGO

THE TELECOMMUNICATIONS ACT (ACT NO: 4 OF 2001)

REGULATIONS

Made by the Minister under section 78 (1) of the Telecommunications Act

DRAFT TELECOMMUNICATIONS (PRICING) REGULATIONS, 2006

PART I PRELIMINARY

- Citation
1. These Regulations may be cited as the Telecommunications (Pricing) Regulations, 2006, hereinafter referred to as "**the Regulations**".
 2. These Regulations address the pricing of public telecommunications networks and public telecommunications services in the Republic of Trinidad and Tobago, and are made pursuant to section 29 of the Act.
- Interpretation
3. (1) In these Regulations:

"Competitive market" means a market in which none of the concessionaires is dominant.

"Concessionaire" means a person or an entity authorized to operate a public telecommunications network or provide a public telecommunications service under section 21 of the Act.

"Contested market" means a market in which two or more concessionaires provide services and at least one is dominant.

"Dominant concessionaire" means a concessionaire determined by the Authority to be in a position of dominance in a relevant market.

"Essential facility" means a facility for which there exists no alternative that is both technically feasible and economically viable.

“Market” means a telecommunications services market as defined by the Authority in accordance with regulation 4.

“Price cap regime” means a price control regime within a relevant market in which a concessionaire is required to reduce prices for a basket of services by a pre-determined amount, or is allowed to raise prices for a basket of services by no more than a pre-determined amount, on an annual basis.

"Separated accounts" means accounts pursuant to a direction given in regulation 31.

"Uncontested market" means a market in which only one concessionaire provides services or a market with one dominant concessionaire.

(2) Terms not otherwise defined in these Regulations shall have the meanings defined in the Act.

(3) A reference to a Regulation or subsection is a reference to the relevant Regulation or subsection of these Regulations.

PART II MARKETS FOR TELECOMMUNICATIONS SERVICES

- Definition of markets
4. The Authority shall:
- a) analyse the provision of telecommunications services in the Republic of Trinidad and Tobago to determine the markets within which price regulation will apply;
 - b) define markets based on economic principles, taking account of international best practice and the extent of telecommunications development and liberalisation in Trinidad and Tobago;
 - c) define the scope of markets both in terms of products and services offered to consumers and any geographical variations in supply and demand conditions;
 - d) publish its draft findings and conduct a public consultation with interested parties in accordance with the Authority's consultation procedures;
 - e) publish its final decision on markets and price

regulation of telecommunications services, taking account of the comments received in the consultation period; and

f) review its decisions on markets from time to time, either in response to a substantial change in market conditions or, at its discretion, in response to an application from a concessionaire to conduct such a review.

g) identify all uncontested markets.

5. A concessionaires shall, within 28 days of the receipt of a request to do so, provide to the Authority such information as the Authority may reasonably require from time to time in order to conduct its assessment of markets or otherwise in connection with price regulation of telecommunications services.

Assessment of dominance
in telecommunications
markets

6. The Authority shall publish criteria for establishing dominance in markets. Such criteria shall include:

- a) a presumption, in the absence of evidence to the contrary, that a concessionaire with a market share of 40% or more of gross revenues in one or more markets is dominant in those markets;
- b) a presumption, in the absence of evidence to the contrary, that a concessionaire with a market share of less than 40% of gross revenues is not dominant;
- c) a presumption, in the absence of evidence to the contrary, that a concessionaire having control of an essential facility is dominant in markets identified with that essential facility.

7. When assessing dominance the Authority shall:

- a) analyse markets according to its published criteria, to determine which, if any, concessionaires are dominant in the market;
- b) review all relevant factors in the markets including, but not limited to, market share of the concessionaires, market entry barriers, control of essential facilities, access to capital by concessionaires, countervailing buyer power, technological advantages and economies of scale or scope;

- c) assess whether the market exhibits the characteristics for joint dominance of two or more concessionaires;
 - d) classify all markets as either competitive markets or contested markets or uncontested markets;
 - e) publish its decisions on dominance; and
 - f) review its decisions on dominance from time to time, either in response to a substantial change in market conditions or, at its discretion, in response to an application from a concessionaire to conduct such a review.
8. The Authority shall also publish a description of the process and methodology it will apply in any assessment of dominance in particular markets for telecommunications services, including identifying the information to be submitted by concessionaires or other interested parties, applicable data formats and whether information is to be submitted on a single occasion or recurring basis..
9. Concessionaires shall provide to the Authority such information as it may request in connections with any assessment of dominance, including but may not be limited to subscriber numbers, service volumes and service revenues. Concessionaires shall provide all such information in accordance with any time periods identified by the Authority.
10. Dominant concessionaires may apply to the Authority to have their dominant status reviewed. Such an application must be in writing and must contain supporting evidence based on the dominance criteria identified in these Regulations or any other criteria or methodology identified by the Authority.
11. The Authority shall classify each market as either a competitive market, a contested markets or an uncontested markets based on its decision in this Part. The Authority shall publish the market classifications in the Gazette and by posting on its website.

PART III
PRICE CONTROLS FOR TELECOMMUNICATIONS SERVICES

Price cap regime

12. The Authority may impose a price cap regime in uncontested markets and on dominant concessionaires in contested markets.

13. When establishing a price cap regime the Authority shall:

- a) define the basket(s) of services within a particular market which the Authority proposes to make subject to the price cap regime and, where applicable, any sub-baskets;
- b) establish the permitted annual increase in prices or the required annual decrease in prices for each concessionaire and for each basket of services and, where applicable, each sub-basket;
- c) establish the duration of the price cap regime;
- d) publish its proposed price cap regime and consult with interested parties in accordance with the Authority's consultation procedures; and
- e) publish its final decision regarding the price cap regime, taking account of the comments received in the consultation period.

14. (1) A concessionaire subject to a price cap regime shall submit to the Authority, within twenty-eight (28) days of each anniversary of being made subject to the price cap regime, a statement of the change in prices for each basket and sub-basket within the price cap regime during the twelve (12) month period that precedes the anniversary date.

(2) Concessionaires shall provide to the Authority, within twenty eight (28) days of any Authority request, price and revenue data for all services contained within the baskets and, where applicable, sub-baskets that are subject to the price cap regime.

(3) If the Authority finds that any concessionaire has either failed to reduce its weighted average price for any basket of services by the amount required under the price cap regime, or has increased its weighted average price for any basket of services by more than the amount permitted under

the price cap regime, then the Authority may require the concessionaire to make any changes to its prices necessary to comply with the price cap regime.

(4) If the Authority finds that any concessionaire has either reduced its weighted average price for any basket of services by more than the amount required under the price cap regime, or has increased its weighted average price for any basket of services by less than the amount permitted under the price cap regime, then the Authority may permit the concessionaire to either reduce the required price fall or increase the permitted price rise for the following year by an amount that results in equivalent concessionaire revenue.

Notification of Proposed Price Changes

15. Each concessionaire shall provide the Authority with notification in writing of any intended price change, for services within a price cap regime, at least 30 days prior to the proposed date of the price change. The Authority may, on request and at its discretion, waive the 30 day notice period in whole or in part, either for a specific price change request or for a class of such requests.
16. The written notification shall include, at a minimum:
 - a) The name and address of the concessionaire
 - b) The service for which a price change is proposed
 - c) The current price or price schedule for the service.
 - d) The proposed price or price schedule for the service.
 - e) The date at which the price change is proposed to become effective.

Price Review Procedure

17. The Authority may commence a Price Review Procedure if:
 - a) it has reasonable grounds to suspect that any price for any service of any concessionaire has been set so as to result in cross-subsidy or other anti-competitive pricing or acts of unfair competition;
 - b) the proposed price is to be introduced in an uncontested market; or

- c) it has reasonable grounds to suspect that the proposed price change will attract significant public interest.

In either of sub-regulation (b) or (c), the Authority may introduce such additional procedures or public consultation as the Authority considers appropriate in the circumstances

Price Review Panel

- 18. The Authority shall give the relevant concessionaire not less than twenty-eight (28) days notice of its intention to commence a Price Review Procedure and during this period shall allow the concessionaire to submit written evidence to justify the existing or proposed price or price schedule. The Authority may request any other information from the concessionaire relevant to the intended Price Review Procedure. Where evidence or other information is submitted by the concessionaire, the Authority shall consider it before proceeding with any Price Review Procedure.
- 19. If the Price Review Procedure concerns a proposed price change, then the Authority may require that the price change be postponed pending the results of the Price Review Procedure.
- 20. Within twenty-one (21) days following the commencement of a Price Review Procedure, the Authority shall establish a Price Review Panel that will be responsible for determining whether the specified price or price schedule constitutes cross-subsidy or other anti-competitive pricing or acts of unfair competition.
- 21. The Price Review Panel shall comprise three (3) members, one of whom the Authority shall appoint as Chairperson. Members of the Price Review Panel may consist of members of the Board of Directors and staff of the Authority. The Authority may seek the advice of external persons that it deems appropriate based on the circumstances and expertise required.
- 22. The Authority shall determine the terms of reference of the Price Review Panel, which shall include a timetable for the review, and shall deliver a copy of the terms of reference to the concessionaire and each member of the panel.
- 23. The Price Review Panel shall act in a manner that is fair, transparent, objective, non-discriminatory and consistent with the terms of reference under which it was appointed.
- 24. During the course of the Price Review Procedure the Price

Review Panel may seek additional information from any source, including but not limited to the concessionaire whose price is under review. The Price Review Panel may also seek opinion from independent experts.

25. The Price Review Panel may establish and conduct such hearings involving the concessionaire and other interested parties as it deems appropriate.
26. The Price Review Panel shall submit its recommendation to the Authority within three (3) months of its establishment unless an extension is granted by the Board of the Authority upon application from the Price Review Panel.
27. If the Authority accepts the recommendation of the Price Review Panel, it shall issue a consultation document identifying the recommendation of the Price Review Panel. Any such consultation shall be conducted in accordance with the Authority's Consultation Procedures.
28. In the event that the Authority does not accept the recommendation of the Price Review Panel or after the conclusion of any consultation, the Authority may, at its discretion, refer the issue back to the Price Review Panel for its further consideration. In such circumstances the Price Review Panel shall submit its further recommendation to the Authority within twenty-eight (28) days unless an extension is granted by the Board of the Authority upon application from the Price Review Panel.
29. The final decision of the Authority shall be based on the recommendation of the Price Review Panel along with additional information received in any consultation conducted by the Authority. The final decision shall be provided to the concessionaire whose price was under review and shall also be published in appropriate public media and on the Authority's website.
30. The final decision of the Authority shall be published within twenty-eight (28) days of receiving the final recommendation of the Price Review Panel or within twenty-eight (28) days of completing any consultation, whichever is the later.

PART IV ACCOUNTING SEPARATION

Requirement for

December 6, 2006

31. The Authority may direct in writing that a concessionaire

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prepare, maintain and submit to the Authority separated accounts in the format the Authority may from time to time prescribe by publication on its website.

32. In determining whether to make a determination under regulation 20 above, the Authority may take into account the following:
 - a) the range of markets in which the concessionaire operates;
 - b) the range of services it provides in these markets;
 - c) the extent to which it bundles services between markets;
 - d) whether it is dominant in one or more of the markets in which it operates;
 - e) any indication of cross-subsidy or anti-competitive pricing or other acts of unfair competition on its part;
 - f) any other matter the Authority considers appropriate.
33. A concessionaire required to prepare separated accounts shall, within three (3) months of being given notice to do so by the Authority, and annually thereafter until such time as the requirement is withdrawn by the Authority, submit to the Authority its separated accounts, prepared in conformity with Generally Accepted Accounting Practice and appropriately audited.
34. Concessionaires that are required to prepare separated accounts shall follow the principles and procedures determined by the Authority, such principles to include, but not be limited to, cost-causation, historic cost accounting and transparency.
35. The Authority may publish an indicative specimen or template set of separated accounts in order to guide concessionaires in the expected content and format.
36. The Authority shall, within 30 days of receiving the separated accounts from the concessionaire may specify any amendments that it requires, along with the timeframe for completion of such amendments and re-submission.

**PART V
COMPLIANCE**

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| Penalty for breach of Regulations | 37. A concessionaire that breaches or fails to comply with any provision of these Regulations, without prejudice to any other applicable remedies under the Act or otherwise, or any compensation payable in any dispute resolution proceedings, commits an offence and shall be subject to a fine of fifty thousand dollars (\$50,000). |
| Inspection | 38. The Authority may take steps to verify any information provided pursuant to these Regulations, including exercising its inspection powers under the Act. |
| Additional guidelines and directions | 39. The Authority may from time to time issue guidelines or directions on any aspect of these Regulations and either of general application or specific to a proceeding. For greater certainty, the guidelines or directions issued by the Authority pursuant to this section may modify the time periods or durations identified in these Regulations. |

Made this day of 2006.

Minister of Public Administration and
Information

Laid in the Senate this day of 2006.

Clerk of the Senate

Laid in the House of Representatives this day of
2006.

Clerk of the House