

ANNEXURE 3: DRAFT MSA

COMMUNICATIONS AND MULTIMEDIA ACT 1998

COMMISSION DETERMINATION ON THE MANDATORY STANDARD ON ACCESS

DRAFT DETERMINATION NO. [X] OF 2016

Pursuant to the Ministerial Direction to Determine a Mandatory Standard on Access, Direction No. 2 of 2003 and in exercise of the powers conferred by sections 55, 56, 104 (2) and 106 of the Communications and Multimedia Act 1998 [Act 588], the Commission hereby determines as follows:

Citation and commencement

1. This Determination may be cited as the **Commission Determination on the Mandatory Standard on Access, Determination No. [x] of 2016.**
2. This Determination shall come into force on [dd] [MM] 2016.

Note: The following sections of this draft Determination show:

- as clean text, the text of Commission Determination No. 2 of 2005, as varied by Commission Determination No. 2 of 2009, together with minor formatting changes for readability (which do not affect the meaning of the existing Determinations) and updated cross references;
- in mark-up (track changes mode), the MCMC's proposed changes to the existing Standard, and explanatory notes such as this one; and
- explanatory notes where sections of the Standard have been re-ordered to implement a new proposed structure. In such cases, the mark-ups show substantive changes to the text but do not show the movement of the text (which is instead described in the explanatory notes).

Definitions and Interpretation

3. Any term used in this Determination shall, unless the context otherwise requires, have the same meaning as in the Act, ~~or~~ the regulations made under it or the Access List Determination.

4. In this Determination:

“Access Agreement” means an agreement entered into between Operators whereby the Access Provider provides access to an Access Seeker in accordance with the terms contained in such agreement and which shall be registered with the Commission in accordance with the Act;

“Access List” means the list of Facilities and Services determined by the Commission under Chapter 3 of Part VI of the Act~~;~~

“Access List Determination” means the Commission Determination on Access List, ~~Determination No. 1 of 2005~~ Determination No. 2 of 2015~~;~~

~~“Access Reference Document” or “ARD” means a document of terms and conditions, as described in subsection 5.3.2 of the Standard;~~ [Note: The MCMC is considering replacing the ARD requirements with Reference Access Offer requirements. See sections 6 and 13 of the PI Paper.]

“Access Provider” means:

- (a) network facilities provider who owns or provides ~~Facilities~~network facilities listed in the Access List Determination; or
- (b) network service provider who provides ~~Services~~network services listed in the Access List Determination; and
- (c) who is a licensee as defined in the Act;

“Access Request” means a request for access made by an Access Seeker under subsection 5.4 of the Standard and containing the information contained in subsection 5.4.6 of the Standard;

“Access Seeker” means a network facilities provider, a network service provider, an applications service provider or a content applications service provider who is a

licensee as defined in the Act and who makes a written request for access to Facilities and/or Services;

“Access Service Provider” means the Operator to whose Network a line is directly connected and over which Services are supplied, and a person who is an Access Service Provider may also be a Gaining Service Provider or a Releasing Service Provider;

“Access to Network Elements” or “ANE” means Full Access Service, Line Sharing Service, Bitstream with Network Service, Bitstream without Network Service and Sub-loop Service;

“Billing Period” means the period over which the supply of access to ~~network services or~~ Facilities or Services is measured for the purposes of billing as contemplated in subsection 5.14.1 of the Standard, which shall be no more than thirty-one (31) days and in accordance with the relevant calendar month, unless otherwise agreed between the parties;

“Billing Cycle” means the regular periodic basis on which the Access Provider shall issue Invoices for the supply of access to Facilities and Services during each Billing Period, as specified in subsection 5.14.3 of the Standard;

“Billing Dispute” has the meaning given to it in section 6 of the Dispute Resolution Procedures in Annexure A of the Standard;

“BTU” means broadband termination unit;

“Business Day” means a day other than a Saturday and Sunday or in states where Friday is observed as the weekly holiday, Thursday and Friday or a day which is lawfully observed as a national public holiday on the same day around Malaysia;

“B2B” means Business to Business;

“CLI” means Cealling Iine identification;

“Capacity Allocation Policy” has the meaning given to it in ~~the~~ subsection 5.7.32 of the Standard;

“Change Notice” has the meaning given to it in subsection 5.11.3 of the Standard;

“Churn” means those processes which must be carried out by Operators in relation to the provision of Services and transfers of Customers, whenever a Customer requests to transfer from the Operator who has been providing it with one or more Services (Releasing Service Provider) to another Operator (Gaining Service Provider);

“Churn Service” means the service which the Customer requests a Gaining Service Provider to provide;

“Closed Number Area” means a set of digit(s) beginning with the trunk prefix “0” which forms the first part of a national number, and which indicates the defined geographical area within Malaysia where the Customer’s fixed number is located, provided always that “082” to “086” in the state of Sarawak will be treated as one Closed Number Area and “087” to “089” in the state of Sabah will be treated as one Closed Number Area;

“Confidential Information” means all information, know-how, ideas, concepts, technology, manufacturing processes, industrial, marketing and commercial knowledge of a confidential nature (whether in tangible or intangible form) relating to or developed in connection with or in support of the business of the relevant Operator (as the case may be) but does not include:

- (a) information which is or becomes part of the public domain (other than through any breach of an Access Agreement); ~~or~~
- (b) information rightfully received by another person from a third person without a duty of confidentiality being owed by the other person to the third person, except where the other person has knowledge that the third person has obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the first mentioned person; ~~or~~
- (c) information which has been independently developed by another person; or
- (d) information required by law or the business rules of any stock exchange to be disclosed, provided that:
 - i. the receiving Party, gives twenty-four (24) hours’ notice to the disclosing Party of the particulars of the required disclosure; and
 - ii. the receiving Party provides the disclosing Party with all assistance reasonably required by the disclosing Operator (at the disclosing Party’s cost) to enable the disclosing Party to take any steps available

to it to prevent that disclosure or to ensure that it occurs subject to a reasonable obligation of confidence;

“Content Obligations” means those obligations set out in subsections s 5.5 to 5.19 (inclusive) of the Standard;

“Customer” means in relation to an Operator, a person having a contractual relationship with that Operator for the provision of communications by means of that Operator’s Facilities and/or Services;

“Disclosure Obligations” means those obligations set out in subsection 5.3 of the Standard;

“Dispute Resolution” or “Dispute Resolution Procedures” means the procedures outlined in Annexure A of the Standard;

“DSL” means Digital Subscriber Line;

“Effective Date” means the date on which the Standard comes into effect as specified in paragraph 2 of this Determination;

“Equipment” means any equipment (whether hardware or software), or device which is part of or within a Network;

“Facilities” means network facilities and/or other facilities which facilitates the provision of network services or applications services, including content applications services, as listed in the Access List Determination;

“Far End Handover” means the delivery of calls to a POI within the same Closed Number Area where the call is to be terminated, and in the case of a Mobile Network, the delivery of calls to a POI nearest to the location of the called number as requested by the Access Seeker or as mutually agreed between the Access Provider and the Access Seeker;

“Fixed Network” means network facilities and/or network services comprising the public switched telephone network and/or networks based on Internet Protocols for the provision of communications by guided electromagnetic energy or by point-to-point unguided electromagnetic energy;

“Force Majeure” means an event or circumstance beyond the reasonable control of an Operator which affects the Operator’s ability to perform its obligations under the Standard or under an Access Agreement;

“Forecast” means a forecast made by the Access Seeker referred to in subsection 5.6 of the Standard;

“Forecast Information” has the meaning given to it in subsection 5.6.6;

“Forecast Request” means a request by the Access Provider for Forecast Information from the Access Seeker, as described in subsection 5.6.6 of the Standard;

“Functionality Change” has the meaning given to it in paragraph 5.11.2(e) of the Standard;

“Gaining Service Provider” means an Operator to whom another Operator’s Customer requests a transfer;

“HDF” means Handover Distribution Frame;

“HSBB Network Service” means each of the Layer 2 HSBB Network Service with QoS and the Layer 3 HSBB Network Service;

“Interconnection Link” means a physical link connecting the networks of two Operators;

“Intellectual Property” means all rights conferred under statute, common law and equity in and in relation to trade marks, trade names, logos and get up, inventions, patents, designs, copyright, circuit layouts, Confidential Information, know-how and trade secrets and all rights and interests in them or licences to use any of them;

“Interface Change” has the meaning given to it in paragraph 5.11.2(a) of the Standard;

“Invoice” means the invoice for amounts due in respect of the supply of ~~network services or Facilities~~ or Services during a Billing Period or Billing Periods as contemplated in subsection 5.14.3 of the Standard;

“MCMCA” means the Malaysian Communications and Multimedia Commission Act 1998, [Act 589];

“MDF” means Main Distribution Frame;

“Mobile Network” means the network facilities and/or network services comprising the public cellular mobile network and/or the public mobile radio network, for the provision of communications;

~~“MSISDN” means Mobile Station International ISDN;~~

“MVNO” means Mobile Virtual Network Operator;

“Near End Handover” means the delivery of calls to a POI within the same Closed Number Area where the calling number is registered, and in the case of a Mobile Network, the delivery of calls to a POI nearest to the location of the calling number as requested by the Access Seeker or as mutually agreed between the Access Provider and the Access Seeker;

“Negotiation Obligations” means those obligations set out in subsection 5.4 of the Standard;

“Network” means network facilities and/or network services comprising a system, or series of systems within Malaysia, that carries or is capable of carrying communications by means of guided or unguided electromagnetic energy or both, and in relation to an Operator, means so much of the network as is owned or operated by the Operator;

“Network Change” has the meaning given to it in paragraph 5.11.2(c)~~means a change to an Operator’s Network which requires a change to be made to the other Party’s Network to allow the continuance of the end-to-end conveyance of calls across a Point of Interface;~~

“Network Conditioning” means the conditioning, equipping and installation of Equipment in the Access Provider’s Network to enable the provision of O&T Services;

“Notice of Acceptance” means the Access Provider’s notice of acceptance of an Order provided to the Access Seeker pursuant to subsections 5.7.12 and 5.7.13 of the Standard;

“Notice of Receipt” means the acknowledgment of receipt of the Order from an Access Seeker, as described in subsections 5.7.5 and 5.7.6 of the Standard;

“Notifying Party” has the meaning given to it in paragraph 5.11.2(a) of the Standard;

“O&T Service” means an originating or terminating service in the Access List Determination, which ~~on~~ at the Effective Date includes:

- (a) a Fixed Network Origination Service;
- (b) a Fixed Network Termination Service;
- (c) a Mobile Network Origination Service; and
- (d) a Mobile Network Termination Service;

“Order” means the Order which an Access Seeker must give to an Access Provider to obtain access to Facilities or Services~~network services or network facilities~~, as described in subsection 5.7.2 of the Standard;

“OSS” means Operational Support System;

“OSS Change” has the meaning given to it in paragraph 5.11.2(d) of the Standard;

“Party” means the Access Seeker or Access Provider, as the context requires;

“Point of Interface” means a point at or between network facilities which demarcates the Network of an Access Provider and the Network of an Access Seeker and is the point at which a communication is transferred between those network facilities and includes POI and POP;

“Provisional Invoice” means an Invoice issued under subsection 5.14.17 of the Standard;

“QoS” means Quality of Service;

“Recipient Party” has the meaning given to it in paragraph 5.11.2(b) of the Standard;

“Reference Access Offer” or “RAO” has the meaning given to that term in subsection 5.3.3 of the Standard;

“Rejection Notice” means the notice of rejection made by an Access Provider in response to an Access Seeker’s Forecast as described in subsection ~~5.6.12~~ 5.6.13 of the Standard;

“Releasing Service Provider” means an Operator from whom its Customer requests a transfer;

“Relevant Change” ~~has the meaning given to it means the proposed Network Changes referred to~~ in subsection 5.11.2 of the Standard, and includes any Interface Change, Service Change, Network Change, OSS Change and Functionality Change;

“Service Change” has the meaning given to it in paragraph 5.11.2(b) of the Standard;

“Service Qualifications” means:

(a) in relation to O&T Services, Network Co-Location Service, Infrastructure Sharing, Duct and Manhole Access, Interconnect Link Service, Domestic Connectivity to International Services or MVNO Access, a desk and/or field study that may be conducted under subsection 5.7 of the Standard, and may includes (where relevant) the testing of a line to ascertain whether it could be used in response to an Access Request; and

(b) in relation to all other Facilities and Services, includes the interrogation of an Access Provider’s Operational Support Systems to confirm availability of network facilities to fulfil an Order or proposed Order;

“SIM” means Subscriber Identity Module;

“Services” means network services and/or other services which facilitate the provision of network services or applications services, including content applications services, as listed in the Access List Determination;

“Service Specific Obligations” means the obligations which relate to specific types of Facilities and Services set out in section 6 of the Standard and which add to or vary the Content Obligations in respect of those Facilities and Services;

“Standard” means this Mandatory Standard on Access;

“Standard Access Obligations” or “SAO” means the obligations which relate to access as referred to in section 149 of the Act;

“Transfer Form” means a form which is executed by a Customer for the purpose of authorising a Churn; ~~and~~

“Transfer Request” means a request from a Gaining Service Provider to an Access Service Provider to process a Churn, including a Transfer Form; ~~;~~

“Transmission Services” means each of the Trunk Transmission Service, the Wholesale Local Leased Circuit Service and the End-to-End Transmission Service;

“Validity Period” has the meaning given to the term in paragraph 5.7.13(e) of the Standard;

“VLAN” means Virtual Local Area Network; and

“VPN” means Virtual Private Network.

~~“Variation Determination” means the Variation to Commission Determination on the Mandatory Standard on Access (Determination No. 2 of 2005), Determination No.2 of 2009.~~

54. In this Determination, unless the context otherwise requires; ~~:-~~

- (a) the singular includes the plural and vice versa; ~~and~~
- (b) a reference to an agreement, this Determination or another instrument includes any variation or replacement of any of them; ~~and~~
- (c) a reference to an annexure or schedule is a reference to an annexure or schedule to the Standard and a reference to the Standard includes an annexure or schedule; ~~and~~
- (d) a reference to a section or clause is a reference to a section or clause of the Standard and a reference to a paragraph is a reference to a paragraph of the Standard; ~~and~~
- (e) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; ~~and~~
- (f) the word person includes a firm, body corporate, unincorporated association or an authority; ~~and~~

- (g) a reference to a person includes the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation), and assigns; ~~and~~
- (h) all monetary amounts are expressed in Ringgit Malaysia; ~~and~~
- (i) if the day on which the payment of money or the performance of an obligation falls due is not a Business Day, the due date or performance date shall be deemed to be the next Business Day; ~~and~~
- (j) a reference to a third person is a reference to a person who is not the Access Provider or the Access Seeker; and
- (k) a term or expression starting with a capital letter:
 - i. which is defined in paragraph ~~34~~, has the meaning given to it in paragraph ~~34~~;
 - ii. which is defined in the body of the Standard, has the meaning ~~so~~ given to it in the body of the Standard unless the context indicates otherwise; and
 - iii. which is defined in the Act, the Access List Determination or subsidiary legislation made under it but is not defined in paragraph ~~34~~, has the same meaning as in the Act, the Access List Determination or the subsidiary legislation, as the case may be.

65. A definition in the Act shall prevail over a definition in this Determination to the extent of any inconsistency.

Mandatory Standard on Access

76. The Mandatory Standard on Access is as follows:

SECTION 1: PRELIMINARY

1.1 Structure

This Standard is divided into:

- (a) Mmajor sections of the Standard, described as sections (e.g. section 1: Preliminary);
- (b) subsections ~~Parts~~ within each section, described as subsections (i.e. g. subsection 1.2 and subsection 1.2.1); and
- (c) Pparagraphs within subsections, described as paragraphs (i.e. paragraph 1.1(a) and paragraph 1.2.53(a)).

1.2 Outline of contents of the Standard

The sections of the Standard deal with the following issues:

- 1.2.1 Section 1 (**Preliminary**) sets out the structure and outline of the Mandatory Standard on Access.
- 1.2.2 Section 2 (**Background**) provides an introduction and background to the Standard.
- 1.2.3 Section 3 (**Scope**) sets out the scope of the Standard in terms of the Facilities and Services to be covered and the persons who are subject to the Standard.
- 1.2.4 Section 4 (**General P**inciples) sets out the general principles applicable to access regulation in Malaysia, including principles implementing the SAO (**SAO**) contained in section 149 of the Act.
- 1.2.5 Section 5 (**Operator Access Obligations**) sets out the general obligations that apply to all Operators concerning ~~various~~ access to Facilities and Services~~issues under this Standard, which. These obligations~~ build upon the basic obligations or SAO set out in the Act. These obligations ~~will cover areas which~~ include:
 - (a) the Disclosure Obligations; ~~and~~
 - (b) the Negotiation Obligations; and

~~(c) — (c) the Content Obligations, including but not limited to:~~

~~(d) — Forecasting Obligations;~~

~~(e) — Ordering and Provisioning Obligations;~~

~~(f) — Network Conditioning Obligations;~~

~~(g) — Point of Interface Procedures;~~

~~(h) — Decommissioning Obligations;~~

~~(i) — Network Changes Obligations;~~

~~(j) — Network Facilities Access and Co-location Obligations;~~

~~(k) — Billing and Settlement Obligations;~~

~~(l) — Operations and Maintenance Obligations;~~

~~(m) — Technical Obligations;~~

~~(n) — Term, Suspension and Termination Obligations;~~

~~(o) — Churn Procedures;~~

~~Legal Boilerplate Obligations; and~~

~~Service Specific Obligations.~~

[Note: Disclosure Obligations, Negotiation Obligations, Content Obligations and Service Specific Obligations are now defined in paragraph 4 of this Determination.]

1.2.6 Section 6 (**Service Specific Obligations**) sets out the obligations that apply to all Operators concerning various access issues in connection with specific Facilities and Services included in the Access List. These obligations build upon the Operator Access Obligations in section 5 either providing additional detail or introducing specific concepts relevant to a subset of the Facilities and Services in the Access List, including:

- (a) O&T Services;
- ~~(p)~~(b) Wholesale Line Rental Service;
- (c) Interconnect Link Service;
- (d) ANE;
- (e) Digital Subscriber Line Resale Service;
- (f) HSBB Network Services;
- (g) Transmission Services;
- (h) Infrastructure Sharing;
- (i) Network Co-Location Service;
- (j) Domestic Connectivity to International Services;
- (k) Duct and Manhole Access;
- (l) Digital Terrestrial Broadcasting Multiplexing Service; and
- (m) MVNO Access.

1.2.61.2.7 Section 67 (**Standard Administration and Compliance**) sets out the administrative and compliance matters that are applicable to this Standard, including:

- (a) Enforcement of the Standard;
- (b) Implementation of the Standard;
- (c) compliance review;
- ~~(e)~~(d) Transitional measures; and
- ~~(d)~~(e) Review of the Standard.

SECTION 2: BACKGROUND

2.1 Legislative basis for the Standard

2.1.1 This Standard is created by the Malaysian Communications and Multimedia Commission, established under the MCMCA.

2.1.2 The Commission is empowered to create this Standard following the issuance of the Ministerial Direction to Determine a Mandatory Standard on Access, Direction No. 2 of 2003 (**Direction**).

2.1.3 Subsection 55(6) of the Act provides that any Determination by the Commission shall be consistent with the objects of, and any requirements provided in the Act which are relevant to the particular matter or activity.

2.1.4 The Commission has been cognisant of the objects of the Act in determining this Standard including without limitation:

- (a) promotion of the national policy objectives for the communications and multimedia industry;
- (b) establishment of a licensing and regulatory framework in support of national policy objectives for the communications and multimedia industry; and
- (c) establishment of the powers and procedures for the administration of the Act.

2.1.5 The Commission has also been cognisant of the national policy objectives for the communications and multimedia industry, including without limitation:

- (a) to regulate for the long-term benefit of the end user;
- (b) to ensure an equitable provision of affordable services over ubiquitous national infrastructure; and
- (c) to facilitate the efficient allocation of resources.

2.1.6 In accordance with the Direction, the Commission followed the public inquiry procedures prescribed in Chapter 3, Part V of the Act in the course of developing this Standard.

2.2 Overview

2.2.1 This Standard sets out general principles as well as mandatory regulated terms on key rights and obligations ~~indicative model terms and conditions~~ concerning interconnection and access. ~~In doing so, the Commission's objective is to identify key interconnection and access issues in sufficient detail to provide meaningful guidance to parties in expeditiously and efficiently negotiating access arrangements.~~

2.2.2 This Standard does not include a precedent Access Agreement for Access Providers and Access Seekers to execute. The Commission has been concerned to avoid adopting an overly-prescriptive approach which might result in undesirable inflexibility.

2.2.3 Under this Standard, Access Providers are required to make their terms and conditions of access publicly available in the form of Reference Access Offers which must comply with this Standard. The RAOs of Access Providers must be capable of being signed as an Access Agreement or further negotiated by the Access Provider and Access Seeker.

2.2.4 The Commission considers the implementation of the RAO model will help balance the need to ensure expeditious and efficient access on transparent terms whilst providing flexibility to accommodate operator-specific matters and the interests of end-users which may change over time.

SECTION 3: SCOPE

3.1 Types of Facilities and Services covered by the Standard

3.1.1 The Standard deals with access to Facilities and Services included in the Access List Determination. The Standard aims to be sufficiently flexible to deal with change as it occurs, and includes review provisions and transitional provisions (see subsection 7.4 and subsection 7.5).

3.2 Application of the Standard

3.2.1 Any person who is a licensee as defined in the Act and who acts in one or more of the following capacities is subject to the Standard, and in accordance with subsection 7.1.3 of this Standard, may be directed to comply with subsection 105(3) of the Act by the Commission:

- (a) network facilities providers, in their capacity as Access Providers or Access Seekers;
- (b) network service providers, in their capacity as Access Providers or Access Seekers;
- (c) applications service providers, in their capacity as Access Seekers; and
- (d) content applications service providers, in their capacity as Access Seekers.

3.2.2 Consistent with the approach of the access regime established by the Act, the Standard confers the same rights and applies the same obligations on persons listed in subsection 3.2.1 and as between a particular class of person (e.g. network facilities providers), making no distinction between large or small providers nor does it distinguish between established or new providers.

3.2.3 The Standard shall only apply in respect of the wholesale relationship between Operators in relation to access to, Facilities and Services included in the Access List Determination. The Commission encourages all Operators to treat the provisions of the Standard, where relevant, as guideline for any other wholesale access arrangements that may be entered into in respect of facilities and services which are not included in the Access List.

SECTION 4: GENERAL PRINCIPLES

4.1 Principles of Access to Facilities and Services ~~on~~in the Access List

4.1.1 **SAO:** In accordance with the Act and subject to exemptions determined by the Minister, all network facilities providers and network services providers shall provide access on reasonable terms and conditions to the Facilities and Services listed in the Access List to any other:

- (a) network facilities provider;
- (b) network services provider;
- (c) applications services provider; or
- (d) content applications services provider,

who makes a written request to the relevant Access Provider for access.

4.1.2 **Reasonableness:** An Access Provider may refuse a request if:

- (a) supply of the relevant listed Facilities or Services would not be reasonable (see subsection 4.1.3); or
- (b) supply of the relevant listed ~~network facilities~~ Facilities or ~~network services~~ Services would be reasonable, but the terms and conditions requested by the Access Seeker are not reasonable (see subsection 4.1.4).

4.1.3 **Unreasonable request:** Although not prescribed by the Act, a request for access to a listed Facilities or Services may not be reasonable if one or more of the criteria in subsection 5.4.11 of the Standard are satisfied. For clarification, the Standard does not intend or attempt to narrow the grounds of refusal upon which a Party may rely under the Act.

4.1.4 **Unreasonable terms:** The Act provides for several mechanisms to determine terms and conditions if the parties are unable to reach agreement on the terms and conditions of supply, including dispute resolution by the Commission.

4.1.5 **Non-discrimination:** As required by subsection 149(2) of the Act, an Access Provider must provide access to those Facilities or Services specified in the Access List, and such access must be:

- (a) of at least the same or more equally favourable technical ~~S~~standard and quality as the technical standard and quality provided for itself on the Access Provider's Facilities or Services; and
- (b) provided on an equitable and a non-discriminatory basis.

4.1.6 **Meaning of non-discriminatory:** For the purposes of this Standard, the term "non-discriminatory" requires comparison of:

- (a) the basis on which a thing is provided by the Access Provider to an Access Seeker; with
- (b) the basis on which that thing is provided by the Access Provider to itself and to other Access Seekers ~~who are similarly situated~~.

4.2 APPLICATION OF NON-DISCRIMINATION PRINCIPLE

4.2.1 **Examples:** The non-discrimination principle contained in subsection 149(2) of the Act applies to, amongst other things:

- (a) processing of applications for access;
- (b) acceptance or refusal of Access Requests;
- ~~(b)~~(c) provision of information required to place orders;
- ~~(e)~~(d) provisioning of ~~network services~~ Facilities or ~~network facilities~~ Services;
- ~~(d)~~(e) allocation of constrained capacity;
- ~~(e)~~(f) fault reporting and fault rectification;
- ~~(f)~~(g) network conditioning;
- ~~(g)~~(h) allocation of space at exchanges; and
- ~~(h)~~(i) the purpose or use for which access is provided.

4.2.2 **Non-Standard performance:** Nothing in this Standard limits an Access Seeker's ability to request access to Facilities or Services- that is either superior or inferior (e.g. as to technical standard and quality) to that which an Access Provider provides to itself or to its related bodies corporate.

4.3 CUSTOMER PRINCIPLES

4.3.1 **Recognition of principle:** All Operators must recognise and act consistently with the Customer relationship principles referred to in subsection 4.3.2.

4.3.2 Customer relationship principles:

(a) A Customer will be regarded as a Customer of an Operator when the Customer utilises Facilities or a Services provided to that Customer by the Operator.

(b) The same person may be a Customer of more than one Operator:

~~i.~~ in respect of the same or different Facilities provided by different Operators;

~~ii.~~ in respect of the same or different Services provided by different Operators; or

~~iii.~~ in respect of Facilities provided by one Operator and Services provided by another Operator because the Customer is directly connected to one Operator's network facilities but utilises Services provided by another Operator.

(c) The supply by an Operator to another Operator, which the latter Operator then utilises in providing Facilities or Services to its Customers, does not mean that those Customers are also Customers of the first-mentioned Operator.

(d) ~~For the avoidance of doubt, the Operators acknowledge that e~~Each Operator will be responsible for billing its own Customers, unless express agreement to the contrary is made by the Access Provider and the Access Seeker. An agreement to the contrary may include, without limitation:

i. the Access Provider billing on behalf of the Access Seeker; or

- ii. the Access Provider in its own right billing the Customer of the Access Seeker and making a separate payment to the Access Seeker.

4.4 NO EXCLUSIVITY AND NO RESTRICTION ON RESALE

4.4.1 An Access Provider must not, in relation to the supply of a Facility or Service, include a term or condition in an Access Agreement preventing an Access Seeker from acquiring the same or any other Facility or Service from another Operator.

4.4.2 An Access Provider must not, in relation to the supply of a Facility or Service, include a term or condition in an Access Agreement preventing an Access Seeker from re-supplying that Facility or Service to any person.

DRAFT

SECTION 5: OPERATOR ACCESS OBLIGATIONS~~DISCLOSURE, NEGOTIATION AND CONTENT OBLIGATIONS~~

5.1 SCOPE

5.1.1 This section 5 imposes obligations on all network facilities providers and/or network service providers who are required to provide Facilities and/or Services on the Access List under section 149 of the Act.

5.2 APPLICABLE OBLIGATIONS

5.2.1 All persons described in subsection 5.1.1 must comply with each relevant subsection of this Standard, which address the following ~~areas~~:

~~(a) — (outlined in subsection 5.3), comprising obligations to:~~

~~(b) — prepare and maintain an Access Reference Document;~~

~~(c) — make the Access Reference Document publicly available;~~

~~(d) — follow prescribed procedures after acceptance of the Access Reference Document;~~

~~(e)(a) Disclosure Obligations; follow prescribed procedures for amendment of the Access Reference Document.;~~

~~(f) — (outlined in subsection 5.4), comprising obligations to:~~

~~(g) — negotiate in good faith;~~

~~(h) — observe a duty of confidentiality;~~

~~(i) — observe relevant Intellectual Property rights; and~~

~~(j)(b) Negotiation Obligations; conform to applicable timetabling obligations;~~

~~(k) — (outlined in subsections 5.5 to 5.24) which include:~~

~~(l) — Forecasting obligations;~~

~~(m) — Ordering and provisioning obligations;~~

- ~~(n) Network conditioning obligations;~~
- ~~(o) Point of Interface procedures;~~
- ~~(p) Decommissioning obligations;~~
- ~~(q) Network Changes obligations;~~
- ~~(r) Equal access (PSTN) obligations;~~
- ~~(s) Network facilities access and co-location obligations;~~
- ~~(t) Billing and settlement obligations;~~
- ~~(u) Operations and maintenance obligations;~~
- ~~(v) Technical obligations;~~
- ~~(w) Term, suspension and termination obligations;~~
- ~~(x)(c) Content Obligations; Churn obligations; Legal boilerplate obligations;~~
and
- ~~(y)(d) Service sSpecific eObligations.~~

[Note: Disclosure Obligations, Negotiation Obligations, Content Obligations and Service Specific Obligations are now defined in paragraph 4 of this Determination.]

5.3 DISCLOSURE OBLIGATIONS

5.3.1 **General duty:** All Operators shall, subject to the provisions of this Standard and the terms and conditions of any confidentiality agreement entered into pursuant to subsection 5.3.8, provide, in response to a request in good faith from any other Operator, any information which is reasonably necessary for the negotiation, conclusion and implementation of the provision of access as contemplated in this Standard and in the Act. No Operator may enter into any contract which would prevent it from making information available to other Operators unless: ~~such contract permits the Operator to do so if directed by the Commission.~~

(a) the Operator notifies the Commission of its entry into the contract; and

(b) the contract permits the Operator to make the information available to other Operators if directed by the Commission.

5.3.2 **Freedom to negotiate:** Without limiting its obligations under the Act, an Access Provider shall not:

(a) refuse to negotiate an agreement with an Access Seeker, whether the access sought is based on a RAO~~an Access Reference Offer~~ or otherwise; or

(b) refuse to provide information required under this subsection 5.3 on the basis that the Access Seeker wishes to negotiate an agreement, whether the access sought is based on a RAO~~an ARD~~ or otherwise.

~~5.3.3 **ARD:** Each Access Provider shall prepare and maintain an ARD in relation to Facilities or Services on the Access List Determination which that Access Provider provides to itself or third parties and which:~~

~~(a) contains terms and conditions which are consistent with the rights and obligations set out in the Standard; and~~

~~(b) does not include terms and conditions which are inconsistent with the rights and obligations set out in the Standard.~~

5.3.3 **Reference Access Offer:** Each Access Provider shall prepare and maintain a RAO for each Facility and Service in the Access List which that Access Provider provides to itself or third parties. The RAO shall:

(a) set out the full terms and conditions on which the Access Provider is prepared to supply Facilities and Services to any other Operator, including the rates, charging principles and methodologies to be applied for Facilities and Services and any applicable fees or rebates (such as those referred to in subsection 5.7.28 and 5.7.33 of the Standard);

(b) incorporate the details of all available POIs offered by the Access Provider, as specified on its publicly accessible website from time to time under paragraph 5.9.2(a);

(c) contain a copy of the application forms required to be completed by the Access Seeker to apply for access to Facilities and Services, including

a copy of the fast-track application form required for use under subsection 5.4.20;

(d) contain a copy of the Access Provider's standard confidentiality agreement which shall comply with subsection 5.3.8;

(e) contain only terms and conditions which are consistent with the rights and obligations set out in the Standard; and

(f) not contain any terms and conditions which are inconsistent with the rights and obligations set out in the Standard.

For clarification, the requirement to prepare and maintain a RAO shall be without prejudice to any rights and obligations of Access Providers and Access Seekers under an Access Agreement.

[Note: The RAO is a standing offer by the Access Provider to grant access to Facilities and Services to any Access Seeker on the terms of the RAO. The RAO must therefore contain all terms and conditions that the Access Provider will require in an Access Agreement and the Access Provider must not refuse to enter into an Access Agreement with any Access Seeker on the terms of a RAO (subject to limited exceptions, e.g. due to legitimate creditworthiness concerns). See the PI Paper at sections 6 and 13 for further detail.]

[Note: The provisioning of a Facility or Service under an Access Agreement would not be affected during the period when the RAO has yet to be published.]

5.3.4 **Availability:** Each Access Provider shall ensure that each RAO an ARD prepared by it shall:

(a) be in writing (which includes legible electronic format);

(b) contain all information required to be included under this subsection 5.3;

(c) be accurate;

(d) be modular, so that details about the terms and conditions, including the rates, for each of the Facilities and Services are available individually and separately under a RAOan ARD;

(e) be consistent with:

- i. the Act;
- ii. this Standard; and
- iii. any applicable decision or Determination of the Commission;
~~and~~

~~(f)~~ be made available to an Access Seeker on request in paper form at the Operator's principal place of business in Malaysia and on a on the Access Provider's publicly accessible website without delay;

~~(g)~~ specify its date and version number, both on the cover and on each page of the document and on the Access Provider's publicly accessible website; and

~~(f)(h)~~ be provided to the Commission within ten (10) Business Days after being made available under paragraph 5.3.4(f).

5.3.5 Amendment: If an Access Provider proposes to amends a RAO an ARD, that Access Provider must, ~~within ten (10) Business Days of those amendments being made no less than twenty (20) Business Days before the Access Provider proposes to effect the changes,~~ provide ~~a copy of the amendments, or~~ an amended copy of the RAO relevant ARD showing the proposed changes to the previous version of the RAO, to:

(a) all Access Seekers who are being provided with access to Facilities and Services under the RAO Access Provider's ARD; and

~~(b)~~ all Access Seekers who have requested access to Facilities and Services under the RAO an ARD within the period of ninety (90) days prior to the making of such amendments, unless an excluding any such Access Seeker who has since already indicated that it does not wish to proceed with its an Access Request.

For clarification:

- i. nothing in this subsection 5.3.5 prevents an Access Seeker from initiating a dispute in relation to an amendment to a RAO an ARD made by an Access Provider under this subsection;

- ii. where the terms and conditions of an Access Agreement are not identical to those in a RAO based on an ARD, an amendment to a RAO an ARD will not alter the terms of that Access Agreement except as agreed between the Access Provider and Access Seeker; and
- iii. without prejudice to an Access Seeker's right to dispute a change to a RAO an ARD, where the terms and conditions of an Access Agreement are identical to those in a RAO is based on an ARD, an amendment to the RAO an ARD will be deemed to alter the relevant terms and conditions of that Access Agreement. However, if the Access Seeker disputes the change to the RAO-ARD, no amendments to the Access Agreement will be deemed to occur unless and until such dispute is resolved in favour of the Access Provider.

~~For clarification, prior to provision of an ARD to an Access Seeker, the Access Provider may request the Access Seeker to enter into a confidentiality agreement in accordance with subsection 5.3.7.~~

5.3.6 Amended RAO: Upon expiry of the twenty (20) Business Days in subsection 5.3.5 (or such longer period as the Access Provider determines is necessary to finalise the amendments to its RAO), the Access Provider will:

- (a) update its RAO on the Access Provider's publicly accessible website without delay (including updating its date and version number, both on the cover and on each page of the document); and
- (b) provide the updated RAO to the Commission within ten (10) Business Days after being made available under paragraph 5.3.6(a).

5.3.65.3.7 Information Disclosure: An Access Provider must provide the following information to an Access Seeker within ten (10) Business Days of receipt of a written request from that Access Seeker; for the provision of access (whether or not on the basis of a RAO) to the extent that it is not provided in the Access Provider's ARD:

- (a) any supplementary details; of a Facility or Service offered by the Access Provider not included in the RAO, including details concerning all POIs and other locations (including sites deemed to be critical national information infrastructure and other secure sites) at which physical co-

location, virtual co-location or in-span interconnection is available to Access Seeker~~the Access Provider's description of each of the Facilities and Services that may be supplied by the Access Provider, such description to be consistent with the description (if applicable) of the Facilities and Services on the register of Facilities and Services included in the Access List Determination (as maintained by the Commission pursuant to section 148 of the Act);~~

~~(b) the application forms required to be completed by the Access Seeker to apply for access to Facilities and Services including the fast track application under subsection 5.4.19;~~

~~(c) subject to subsection 5.3.7, a confidentiality agreement required to be executed by the Access Seeker;~~

~~(d) the Access Provider's current access charges for access to Facilities and Services, including individual and wholesale offerings;~~

~~(e) details of the basis on which the Access Provider's current access charges are determined;~~

(b) any supplementary access charges for access to Facilities and Services not included in the RAO (for example, discounts for inferior service levels or surcharges for enhanced service levels);

~~(f)~~(c) all supplementary relevant technical information relating to the Facilities or Services which may be the subject of the Access Request, which are not included in the RAO, including but not limited to any physical and logical interfaces of its Network necessary to allow the development and deployment of communications services, value-added services and communications equipment that can interconnect to, and interoperate with, ~~the~~that Access Provider's Network;

(d) supplementary details of the Access Provider's operational processes and procedures not included in the RAO (e.g. regarding escorted access at sites deemed to be critical national information infrastructure or other secure sites);

~~(g)~~(e) supplementary details of the Access Provider's provisioning cycles not included in the RAO and any impact such cycles may have upon an Access Request by the Access Seeker (e.g. capacity constraints);

~~(h)(f)~~ details of the Access Provider's alternative quality of service targets not included in the RAO and actual achievements in respect of the Facilities and/or Services which may be the subject of the Access Request;

~~(i)(g)~~ any security requirements, insurance requirements and creditworthiness information (including a credit assessment form, if available) required by the Access Provider under subsections 5.3.9, 5.3.10 and 5.3.11; and

~~(j)(h)~~ the Access Provider's reasons for failing to supply any of the information referred to in paragraphs 5.3.7(a) to 5.3.7(g) of this subsection 5.3.7.

Prior to the provision of information under this subsection 5.3.7, the Access Provider may request the Access Seeker to enter into a confidentiality agreement in accordance with subsection 5.3.8.

~~5.3.75.3.8~~ **Confidentiality Agreement:** An Access Provider's confidentiality agreement ~~which may to be provided to an Access Seeker on request under subsection 5.3.4 or subsection :~~

~~(a)~~ shall be reciprocal;

~~(a)(b)~~ shall be no broader than the confidentiality provisions in the Access Provider's RAO;

~~(b)(c)~~ shall be no broader than necessary to protect the legitimate commercial interests of the Party disclosing the Confidential Information (**the disclosing Party**);

~~(e)(d)~~ shall include provisions prohibiting the Party receiving the Confidential Information (**the receiving Party**) from disclosing information to third parties or using information other than as necessary for the purposes of assessing a request for access; and

~~(d)(e)~~ shall not prevent the disclosure of Confidential Information or other information to the Commission by the receiving Party.

5.3.9 **Security requirements:**

~~(a)~~ An Access Provider shall not impose any security requirements on an Access Seeker unless the Access Provider determines, acting

reasonably, that the Access Seeker presents a credit risk and that imposing the security requirement will materially reduce or remove that risk.

(e)(b) An Access Provider shall ensure that the amount and type of any security requirements to be imposed on an Access Seeker is only imposed in the Access Provider's security policy and is commensurate with:

- i. a commercially reasonable an-estimate of the charges that will be incurred by value-of-the-access-to Facilities and Services to be provided to the Access Seeker over the minimum period of access to Facilities and Services in an Access Agreement by the Access Provider over a ninety (90) day period;
- ii. the creditworthiness of the Access Seeker (including prior record of payment by the Access Seeker); and
- iii. security previously reasonably required by the Access Provider.

(c) The Access Provider must not impose a security requirement on an Access Seeker which:

- i. exceeds a commercially reasonable estimate of the charges that will be incurred by the Access Seeker for access to Facilities and Services to be provided by the Access Provider to the Access Seeker; or
- ii. is designed to, or has the effect of, denying or delaying the Access Seeker's access to Facilities and Services.

5.3.85.3.10 **Insurance requirements:** An Access Provider shall ensure that any insurance that it requires an Access Seeker to have in place extends no further than the reasonable insurable interest that the circumstances require and shall not be permitted to require:

- (a) insurance beyond that necessary for worker's compensation, social security, employer's liability insurance and insurance within statutory limits as required by the laws of Malaysia in respect of its employees employed in connection with the work covered by the Access Agreement that may be entered into;

- (b) comprehensive general liability insurance in excess of Ringgit Malaysia 20 million for any one claim or series of claims arising out of an accident or occurrence in connection with the Access Agreement that may be entered into.

[**Note:** MCMC is considering whether the prescribed comprehensive general liability insurance limit of RM20 million remains appropriate or whether it ought to be adjusted to reflect any changes in commercial practice or otherwise. See the PI Paper at section 15 for discussion.]

5.3.95.3.11 **Creditworthiness information:** An Access Provider may only request creditworthiness information from an Access Seeker:

- (a) if the Access Provider reasonably believes that the Access Seeker may not be able to meet any liabilities that may arise under an Access Agreement with the Access Seeker;
- (b) if the creditworthiness information sought is limited to information which is publicly available (on ~~the~~ this basis, the Access Provider may request the Access Seeker to warrant that such information is accurate); and
- (c) to the extent commensurate with a commercially reasonable estimate of the ~~charges value that will be incurred of the access to the Facilities and Services to be provided to by~~ the Access Seeker over the minimum period of access to Facilities and Services in an Access Agreement by the Access Provider over a ninety (90) day period.

5.3.12 Reporting obligations: On 1 April and 1 October of each year, each Access Provider shall notify the Commission in writing of:

- (a) each Facility and Service which is included in the Access Provider's RAO as published on its publicly accessible website;
- (b) each Facility and Service which is not included in the Access Provider's RAO as published on its publicly accessible website;
- (c) each Access Agreement which the Access Provider has entered into, including:
- i. the name and contact details of the relevant Access Seeker;

- ii. the Facilities and Services made available under the Access Agreement;
 - iii. any other products or services made available under the Access Agreement;
 - iv. the term of the Access Agreement;
 - v. whether the Access Agreement is based on the terms of the Access Provider's RAO, is negotiated on amended terms of the Access Provider's RAO, or is negotiated on alternative terms; and
 - vi. any further details of the Access Agreement that may be requested by the Commission from time to time;
- (d) each Facility and Service which has been supplied under an Access Agreement during the period since the previous reporting period under this subsection 5.3.12 and the name and details of the party to which they were supplied;
- (e) each Access Agreement which has expired or has been terminated since the previous reporting period under this subsection 5.3.12;
- (f) details of any security required by the Access Provider from Access Seekers under subsection 5.3.9 or subsection 5.19.8, as revised or varied under subsection 5.19.7;
- (g) details of all ongoing negotiations with Access Seekers, including the date on which the negotiation commenced;
- (h) details of all ongoing disputes with Access Seekers to which the Dispute Resolution Procedures apply;
- (i) details of any ongoing space constraints at any POI locations including due to technical reasons;
- (j) details of any constrained capacity and how it has been allocated in accordance with the Access Provider's Capacity Allocation Policy (or the Access Provider's Capacity Allocation Policy for Duct and Manhole Access, as the case may be);

(k) summary details of all refused requests for interconnection or access by Access Seekers since the previous reporting period under this subsection 5.3.12;

(l) the information required to be provided under subsections 6.6.15, 6.7.7, 6.9.16, 6.11.7 and 6.12.12; and

(m) any other information requested by the Commission.

5.4 NEGOTIATION OBLIGATIONS

5.4.1 **Timing:** If an Operator wishes to negotiate an Access Agreement with another Operator:

(a) both parties shall notify the Commission when the negotiations for the Access Agreement begin under this subsection;

(b) both parties shall use their best endeavours to conclude the Access Agreement within a hundred and twenty (120) days ~~after~~ a written request by the Access Seeker to commence negotiations under paragraph 5.4.6(c) and the Access Provider's response confirming it is willing to proceed to negotiate under paragraph 5.4.7(b); and

(c) if the negotiations are not completed within the hundred and twenty (120) days under paragraph 5.4.1(b):

i. the parties may jointly apply to the Commission for an extension of time to negotiate and if the extension of time is not granted by the Commission, there shall be deemed to be a dispute between the parties and the Dispute Resolution Procedures shall take effect; or

ii. either Party may initiate the Dispute Resolution Procedures; and

(d) if the Commission grants an extension of time under paragraph 5.4.1(c)i, it may do so subject to such conditions as it determines (such as an ongoing requirement to provide updates on negotiations at specified intervals and the right to reduce or extend any extension).

[Note: MCMC is considering shortening the negotiation period from 120 days to 60 days for negotiations where there is already a commercial agreement in

place between the Operators. See the PI Paper at sections 16.5 to 16.11 for the further information.]

5.4.2 **Good faith:** An Operator shall co-operate, in good faith and in a commercially reasonable manner, in negotiating and implementing the terms of its Access Agreements. This includes:

(a) acting promptly, honestly, and not perversely, capriciously or irrationally;

(b) avoiding the imposition of unreasonable restrictions or limitations on the provision of access to Facilities and Services (such as refusing to provide particular forms of access that the Access Provider provides to itself); and

~~(a)(c)~~ avoiding unnecessary disputes and resolving disputes promptly and fairly.

5.4.3 **Confidentiality:** An Operator must protect from disclosure any Confidential Information provided by another Operator in the course of negotiating an Access Agreement and during the term of an Access Agreement in accordance with a confidentiality agreement prepared under subsection ~~5.3.85-3.7~~.

5.4.4 **Intellectual Property:** An Operator shall only use such Intellectual Property and information provided by another Operator for the purposes of providing or acquiring access to ~~the requested network services or network facilities~~requested Facilities and Services. An Operator must not use such Intellectual Property or information for the development or marketing of other communication services or Equipment by that Operator, its affiliates or third parties.

5.4.5 **Access RequestProvision of application:** An Access Provider may require an Access Seeker to provide an Access Request to the Access Provider if:

(a) there is no agreement in force between the Access Provider and the Access Seeker governing access to the Facilities or Services to which the Access Seeker seeks access; or

(b) there is such agreement, but:

- i. the current term of that agreement will expire or terminate within the next four (4) months; or
- ii. the requested ~~network service or~~ Facilities or Services are outside the scope of that agreement.

5.4.6 **Required information Access Request**: An Access Request must contain the following information:

- (a) the name and contact details of the Access Seeker;
- (b) the Facilities or Services in respect of which access is sought;
- (c) whether the Access Seeker wishes to accept the ~~ARD Access Provider's RAO, to negotiate amendments to the RAO,~~ or to negotiate an Access Agreement on alternative terms;
- (d) the information (if any) the Access Seeker reasonably requires the Access Provider to provide for the purposes of the negotiations. The type of information which may be requested by the Access Seeker is described in, but not limited to, subsection 5.3.7;
- (e) two (2) copies of a confidentiality agreement properly executed by the Access Seeker in the form prescribed by the Access Provider in accordance with subsection 5.3.8;
- (f) preliminary information regarding the scale and scope of Facilities and Services that the Access Seeker expects to acquire from the Access Provider pursuant to the Access Request~~Forecasts of the capacity the Access Seeker will reasonably require, having regard to the Access Provider's disclosed provisioning cycle (as described in paragraph 5.3.6(g)), and the Forecasting procedures (as described in subsection 5.6);~~

[**Note:** The MCMC is proposing that forecasting will be required for ordering and provisioning, not as a prerequisite to entering into an Access Agreement. See sections 16.12 to 16.17 of the PI Paper.]

- (f)(g) relevant technical information relating to the interface Sstandards of the Access Seeker;

~~(g)~~(h) relevant information relating to the Access Seeker's Network and the functionality of its Services, to the extent that the Access Seeker is aware that such information may affect the Access Provider's Network;

~~(h)~~(i) creditworthiness information in accordance with the Access Provider's requirements, as set out in subsection 5.3.11;

~~(i)~~(j) assessed security (or, if applicable, confirmation of security provided) in accordance with the Access Provider's security requirements, as set out in subsection 5.3.9;

~~(j)~~(k) insurance information in accordance with the Access Provider's insurance requirements, as set out in subsection 5.3.10; and

~~(k)~~(l) such other information as the Access Provider may reasonably request for the sole purpose of providing access to requested Facilities and Services.

[Note: MCMC is considering whether information which has already been provided to the Access Provider can be omitted from an Access Request, for example, where there is an existing commercial arrangement between the Operators and requiring the provision of information which has already been provided would unreasonably delay the negotiations of an Access Agreement. See the PI Paper at section 16.9 for discussion.]

5.4.7 Obligations upon receipt: The Access Provider shall, within ten (10) Business Days of receipt of an Access Request, respond to the Access Seeker in writing acknowledging receipt of the Access Request and stating that:

(a) if the Access Seeker is willing to accept a RAO~~an ARD~~ from the Access Provider, the Access Provider will ~~is willing to~~ provide access in accordance with the RAO~~an ARD~~; ~~or~~

(b) if paragraph 5.4.7(a) above does not apply, the Access Provider is willing to proceed to negotiate amendments to the RAO or an Access Agreement on alternative terms~~the Access Request~~; ~~or~~

(c) the Access Provider refuses~~rejects~~ the Access Request in accordance with subsection 5.4.10; or

(d) the Access Provider requires specified additional information to make a decision on the Access Request in accordance with paragraphs 5.4.7(a) ~~or paragraph 5.4.7(b)~~ to 5.4.7(c), and once that information is received from the Access Seeker, the Access Provider shall reconsider the Access Request in accordance with this subsection.

The Access Provider must provide a copy of its response to the Commission at the same time that the Access Provider provides the response to the Access Seeker.

5.4.8 **ARD-Acceptance response:** If the Access Provider responds that access will be provided in accordance with a RAO ~~an ARD~~ (as described in paragraph 5.4.7(a)), the Access Provider must, within ten (10) Business Days of such response, provide two copies of the RAO ~~an ARD~~ executed by the Access Provider to the Access Seeker.

5.4.9 **Negotiation response:** If the Access Provider is willing to proceed with negotiation of the Access Request (as described in paragraph 5.4.7(b)), the Access Provider must set out in ~~its such~~ response to the Access Seeker:

(a) a place, date and time, not later than fifteen (15) Business Days from the date of the Access ~~Seeker's Provider's~~ response, when at which the Access Provider's representatives with authority to negotiate an Access Agreement will be available for the initial meeting with representatives of the Access Seeker with authority to negotiate an Access Agreement; and

(b) one copy of the executed confidentiality agreement returned by the Access Seeker (in accordance with paragraph 5.4.6(e)) that has also been properly executed by the Access Provider.

5.4.10 **Refusal response:** If the Access Provider decides to refuse the Access Request (as described in paragraph 5.4.7(c)), the Access Provider must set out in its response to provide the Access Seeker ~~with a written response, setting out:~~

(a) the grounds in subsection 5.4.11 on which the Access Provider is relying; ~~and~~

(b) the basis of the Access Provider's decision with sufficient particulars to enable the Access Seeker to make its own assessment about the applicability of the specified grounds of ~~refusal~~rejection; and

(c) a place, date and time, not later than seven (7) Business Days from the date of the ~~Access Provider's response~~Rejection Notice, at which representatives of the Access Provider authorised to review the Access Provider's assessment of the Access Request will be available to meet with representatives of the Access Seeker for the purpose of discussing the ~~refusal~~rejection of the Access Request. At this meeting, the Access Seeker may request the Access Provider to substantiate its reasons for refusal (and the Access Provider shall do so), and if access has been refused on the basis of the grounds in:

i. paragraph 5.4.11(b), the Access Provider must reassess the Access Seeker's original Access Request considering any supplementary information provided by the Access Seeker;

ii. paragraph 5.4.11(d), the Access Provider must identify when additional capacity or space is likely to be available; and

~~i.~~iii. paragraph 5.4.11(e), the Access Provider must identify the form of security requirement which would satisfy its concern that the Access Seeker may fail to make timely payment for the requested Facilities or Services, its reasons for the security requirement and why it considers such concern cannot be addressed through a security requirement under subsection 5.3.9 of this Standard.

5.4.11 Grounds for refusal: ~~Except where expressly permitted otherwise~~ Without limiting any other grounds that may be relied upon under the Act or section 6 of this Standard, an Access Provider shall not refuse an Access Request, except on the grounds that:

(a) the Access Provider does not currently supply, or provide access to, the relevant Facilities or Services to itself or to any third parties (in which case it shall identify any alternative Facilities or Services which it does provide to itself or to any third parties, which may be acceptable substitutes), except where the Access Seeker compensates the Access Provider for the original supply of access to Facilities or Services- to the Access Seeker;

- (b) the Access Seeker has not provided all of the information required to be provided in accordance with subsection 5.4.6 of this Standard;
- (c) it is not technically feasible to provide access to the Facilities or Services requested by the Access Seeker;
- (d) subject to this Standard, the Access Provider has insufficient capacity or space to provide the requested Facilities or Services ~~or Facilities~~;
- (e) the Access Provider has reasonable grounds to believe that the Access Seeker may fail to make timely payment for the requested Facilities or Services and such concern cannot be addressed through a security requirement in accordance with this Standard;
- (f) there are reasonable grounds to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions applicable to the supply of the Facilities or Services; or
- ~~(fa) in respect of Full Access Service, Line Sharing Service and Sub-loop Service, save in cases where an Access Agreement has been entered into between the Access Provider and an Access Seeker, the Access Provider provides evidence that those premises will be served by a HSBB Network Service (with or without QoS) within 3 years from the date of the request; or~~
- (g) there are reasonable grounds for the Access Provider to refuse access in the national interest.

[**Note:** Section 6 now includes limited bases on which an Access Provider may refuse to provide access to ANE or the Digital Subscriber Line Resale Service at premises served by HSBB Network Services.]

5.4.12 **Dispute resolution:** If, following the meeting between the parties required to be held pursuant to paragraph 5.4.10(c) for the purposes of discussing an Access Provider's refusal of an Access Request, the parties have been unable to resolve any ~~their~~ differences about the validity of the Access Request and the Access Seeker ~~continues to disagree~~ with the Access Provider's refusal/rejection of the Access Request, either Party may request resolution of the dispute in accordance with the Dispute Resolution Procedures.

5.4.13 **Initial meeting:** Unless otherwise agreed between the Operators, each Operator shall ensure that its representatives meet on the date notified pursuant to paragraph 5.4.9(a) and that such representatives:

(a) agree a timetable for the negotiations, including milestones and dates for subsequent meetings within the applicable timeframe for negotiations under subsection paragraph 5.4.1(b);

(a)(b) agree on negotiating procedures, including:

i. calling and chairing meetings;

(b)(c) responsibility for keeping minutes of meetings;

i. clearly defined pathways and timetables for escalation and resolution within each Party of matters not agreed in meetings;

ii. procedures for consulting and including in the negotiating process relevant experts from the staff of each of the Operators; and

iii. procedures for preparing and exchanging position papers;

(d) review the information requested and provided to date and identify information yet to be provided by each Operator; and

[**Note:** MCMC is considering whether an Access Seeker can reasonably be exempted from providing information which has already been provided to the Access Provider, for example, in connection with an existing commercial arrangement between the Operators]

(e)(e) identify what technical investigations, if any, need to be made and by whom such investigations should be made.

5.4.14 **Facilities and Services not specified in the Access List**~~Additional matters:~~

If an Access Seeker wishes to obtain~~apply for~~ access to additional Facilities or Services that are not specified in the Access List~~covered by an existing Access Agreement~~, then the requirements under this subsection 5.4 ~~the application and negotiation provisions set out above~~ may apply to any request~~application~~ for access to such additional Facilities or Services to the extent agreed by the parties.

5.4.15 Additional matters~~Good faith~~: An Access Provider shall not do, or threaten to do, anything that has the effect or likely effect of, any of the following:

- (a) refuse to negotiate terms of access not related to price for the reason that the price of access has not been agreed;
- (b) refuse to negotiate access to Facilities or Services because the Access Seeker has not agreed to acquire access to other Facilities or Services or because the Access Seeker has not agreed to acquire a particular configuration, option or feature of a requested Facility or Service;
- (c) require an Access Seeker to enter into a confidentiality agreement the terms of which would preclude the disclosure of information requested by the Commission or required to be disclosed for the purposes of dispute resolution;
- (d) require an Access Seeker to warrant that an Access Agreement complies with all applicable laws;
- (e) refuse to include in any Access Agreement a provision permitting variation of the Access Agreement in the event of any change in rules, applicable laws or applicable regulations (including Commission decisions and ~~d~~Determinations);
- (f) make any negotiation conditional on the Access Seeker first obtaining any regulatory approval or consent;
- (g) intentionally mislead or coerce an Access Seeker into reaching an agreement it would not otherwise have reached;
- (h) intentionally obstruct or delay negotiations or any dispute resolution process;
- (i) fail to nominate representatives who have sufficient authority and with sufficient availability to progress negotiations in a timely and efficient manner; ~~or~~
- (j) fail to provide information that is necessary to conclude an Access Agreement including, without limitation:

- i. information about the Access Provider's Network that the Access Seeker reasonably requires to identify the Network elements to which it requires access; and
- ii. information about the basis of the ~~D~~determination of charges.

5.4.16 **Non-permitted ~~I~~information:** Notwithstanding anything else in this Standard, an Access Provider shall not oblige an Access Seeker to provide any of the following information to the Access Provider (whether as a condition of the provision of further information or as a condition ~~if~~of assessing the Access Seeker's application, or at any other time):

- (a) the Access Seeker's proposed service launch date (though the Access Provider may request the Access Seeker to specify any ready-for-service dates which the Access Seeker requires from the Access Provider in respect of the requested Facilities and Services);
- (b) details of the functionality of the Access Seeker's proposed service, except to the extent that such functionality may affect the Access Provider's Network;
- (c) details of the Access Seeker's Network rollout plans, except to the extent that such rollout plans relate to ready-for-service dates requested by the Access Seeker ~~in respect of particular Points of Interface;~~
- (d) details of the Access Seeker's current or proposed retail charges;
- (e) details of the Access Seeker's marketing strategy or proposed client base;
- (f) financial information relating to the Access Seeker's business, except to the extent that such information may be required pursuant to the creditworthiness requirements in subsection 5.3.11; ~~or~~
- (g) details of any other supply arrangements or Access Agreements to which the Access Seeker is or may be a Party, except to the extent that such details are directly relevant to technical characteristics of the requested ~~Access Facility or Service; or~~

~~(g)~~(h) any other commercially sensitive information of the Access Seeker which is not strictly required by the Access Provider to supply a requested Facility or Service.

5.4.17 **Technical infeasibility:** For the purposes of paragraph 5.4.11(c), an Access Provider shall not ~~refuse~~~~reject~~ an Access Request on the grounds of technical infeasibility unless the Access Provider establishes that there are substantial technical or operational concerns preventing the fulfilment of the Access Request. Each of ~~T~~the following matters shall be taken into account in determining whether access is technically feasible:

- (a) economic, accounting, billing, space or site concerns shall be disregarded, by the Access Provider except that space or site concerns may be taken into account in circumstances where there is no possibility of expanding the space available on the relevant site;
- (b) any requirement for the Access Provider to modify its facilities or Equipment in order to meet the Access Request will not, of itself, mean that the access is not technically feasible;
- (c) if the Access Provider asserts that meeting the Access Request would have an adverse impact on Network reliability, the Access Provider must provide evidence that provision of the requested Facilities or Services would result in a specific and significant adverse impact on Network reliability; and
- (d) the Access Provider must be able to demonstrate that it has considered and found not to be technically feasible (in accordance with this subsection~~clause~~) improvements that would allow the Access Provider to meet the Access Request (in whole, or in part, and including for an interim period until any primary difficulties can be resolved).

5.4.18 **Capacity constraints:** An Access Provider may only refuse an Access Request on the ground that an Access Provider has insufficient capacity or space ~~under~~~~set out in~~ paragraph 5.4.11(d) where the Access Provider notifies the Commission in writing that it does not have sufficient capacity to meet the Access Request because the requisite capacity is:

- (a) already carrying traffic to capacity or near full capacity; or

- (b) already reserved for future use by the Access Provider or another Access Seeker, where such future use shall commence not later than six (6) months from the date of the Access Request. If the reserved capacity is not subsequently used by the reserving Party within seven (7) months from the date of the Access Request, the Access Provider must promptly inform the Access Seeker and, if required by the Access Seeker, re-consider the Access Request in accordance with the process set out in this subsection 5.4; and
- (c) in the case of both paragraphs 5.4.18(a) and 5.4.18(b), the Access Provider is unable to expand capacity ~~within the period Forecast by the Access Seeker to meet the requirements of~~ in the Access Seeker's Access Request.

5.4.19 **Reporting on refusals:** ~~If an Access Provider refuses an Access Request, it must notify the Commission within five (5) Business Days of that refusal together with an explanation of its reason for refusal under subsection 5.4.11.~~

5.4.20 **Fast-track application and agreement:** Notwithstanding and as an alternative process to that set out in subsections 5.4.1 to 5.4.18, an Access Provider ~~shall~~will make available a fast-track application and agreement process for Access Seekers based on the following principles:

- (a) the fast-track process ~~shall~~may be limited to the criteria set out by the Access Provider in accordance with subsection 5.4.21;
- (b) the application form:
 - i. shall be limited to gathering information from the Access Seeker as set out in ~~paragraphs~~subsection 5.4.6(a) and 5.4.6(b); and
 - ii. in respect of any requirement to provide security, shall set out a process for determining the required security sums under subsection 5.3.9 within five (5) Business Days of the Access Provider's receipt of a fast-track application~~be limited to the provision by the Access Seeker of a standard security amount which shall be no more than RM50,000;~~
- (c) the Access Provider may only ~~reject~~refuse the Access Seeker's fast-track application for the reasons set out in ~~paragraphs~~subsection 5.4.11(a), 5.4.11(e) or 5.4.11(f);

(d) the fast-track agreement between the Access Provider and the Access Seeker must be on the terms of ~~made in accordance with~~ the Access Provider's RAOARD; and

~~(e) within ten (10) Business Days of the Access Provider's receipt of a fast-track application,~~ the Access Provider must, ~~within ten (10) Business Days of the receipt of a fast track application;~~

i. ~~provide the Access Seeker with two copies of the RAO an ARD executed by the Access Provider, or a notice of refusal that sets out the grounds for refusal under paragraph 5.4.20(c) (including the basis on which those grounds apply); to the Access Seeker and~~

~~ii. provide the Commission with a copy of the response at the same time that it provides the response to the Access Seeker under paragraph 5.4.20(e)i.~~

5.4.21 Principles for setting up fast-track process: The Access Provider shall set up, and publish on its publicly accessible website ~~in its ARD~~, the criteria on which Access Seekers will be eligible for the fast-track application and agreement process according to the following principles:

(a) the criteria must be determined and applied by the Access Provider on a non-discriminatory basis;

(b) the fast-track process may be limited to ~~those Access Seekers whose requirements~~ the supply of Facilities and Services to the extent that such supplies do not have a material impact on the Access Provider's current level of network resources; and

(c) the Facilities and/or Services which may be the subject of a fast track application may be limited to Fixed Network Termination Service, Mobile Network Termination Service, ~~Domestic Network~~ Transmission Services, ~~Private Circuit Completion Services~~, Interconnect Link Service, ~~and Internet Interconnection Services~~ HSBB Network Services, Digital Subscriber Line Resale Service and ANE.

5.5 CONTENT OBLIGATIONS: GENERAL

5.5.1 **Content Obligations:** The Content Obligations ~~referred to~~^{covered} in this ~~Standards~~^{subsection 5.5} are as follows:

- (a) General Obligations (subsection 5.5);
- (b) Forecasting Obligations (subsection 5.6);
- (c) Ordering and Provisioning Obligations (subsection 5.7);
- ~~(d) Network Conditioning Obligations;~~

[**Note:** MCMC is considering incorporating the Network Conditioning Obligations (previously set out in subsection 5.8) into the Service Specific Obligations for O&T Services (see subsection 6.1). Please see the discussion at section 19 in the PI Paper.]

~~(e)~~(d) Point of Interface Procedures (subsection 5.9);

~~(f)~~(e) Decommissioning Obligations (subsection 5.10);

~~(g)~~(f) Network Changes Obligations (subsection 5.11);

[**Note:** subsection 5.12 (Equal Access Obligations) was deleted in accordance with section 3(l) of the Variation to Commission Determination on the Mandatory Standard on Access (Determination No. 2 of 2005), Determination No. 2 of 2009.]

~~Network Facilities Access and Co-location Obligations;~~

[**Note:** subsection 5.13 (Network Facilities Access and Co-Location) is now incorporated under subsection 6.9 (Network Co-Location). See the PI Paper at section 23 for discussion regarding the Network Co-Location Service.]

~~(h)~~(g) Billing and Settlement Obligations (subsection 5.14);

~~(i)~~(h) Operations and Maintenance Obligations (subsection 5.15);

~~(j)~~(i) Technical Obligations (subsection 5.16);

~~(j)~~(i) Term, Suspension and Termination Obligations (subsection 5.17);

~~(k)~~(k) Churn Obligations (subsection 5.18); and

~~(l)~~ the Legal Boilerplate Obligations (subsection 5.19); ~~and~~

~~Service Specific Obligations.~~

5.5.2 **Application:** Unless otherwise specifically provided in this Standard, the Content Obligations shall apply to all Facilities and Services subject to the Service Specific Obligations which are set out in section 6.

5.5.3 **General:** All Access Providers must:

(a) include in each RAOARD, obligations which are consistent with these Content Obligations; and

(b) not include in any RAOARD, obligations which are inconsistent with these Content Obligations.

5.5.4 Compliance with Content Obligations: ~~In addition to incorporating rights into its ARD, e~~Each Operator shall comply with:

~~(a) the obligations set out in~~ this subsection 5.5; ~~and~~

~~(b) the following subsections 5.6 to 5.19~~ (inclusive); and

~~(c) the Service Specific Obligations in section 6, as applicable under this Standard.~~

5.6 FORECASTING OBLIGATIONS

5.6.1 General: Subject to subsections 5.6.3 and 5.6.4, an Access Provider may require, as a condition of accepting Orders for providing access to ~~a~~ Facilities or Services ~~(requested by the~~ from an Access Seeker) ~~(but not as a prerequisite for entering into an Access Agreement)~~, that the Access Seeker provide Forecasts in good faith ~~over~~ with regard to a certain period of supply of access to Facilities or Services (as the case may be) in accordance with this subsection 5.6.

5.6.15.6.2 **Prerequisite information:** The Access Seeker may request preliminary information from the Access Provider about the availability and capacity of its Facilities and Services to the extent the Access Seeker requires such information to provide Forecasts.

5.6.25.6.3 **Confirmation of Forecast:** If an Access Provider, acting reasonably will incur significant costs to ensure that access can be provided in accordance with a Forecast (for example, because it will need to proactively augment its Network to provide access within the requested timeframes), the Access Provider may request the Access Seeker to confirm the relevant Forecast. Once confirmed, the Forecast is deemed to be an Order for the purposes of this Standard, and subsection 5.7 will apply.

5.6.35.6.4 **Alternative procedure:** An Access Provider and an Access Seeker may agree to an alternative Forecasting and Ordering procedure other than that set out in this subsection 5.6 as part of an Access Agreement. If agreement is reached about such matters, the Access Provider and Access Seeker will be bound by the terms of that alternative procedure and not this subsection 5.6.

5.6.45.6.5 **Non-binding:** Subject to subsection 5.6.35.6.1, an Access Provider shall not require an Access Seeker to provide Forecasts that are legally binding on the Access Seeker, subject to except to the extent that the Access Provider is permitted to recover costs and expenses as set out in subsection 5.6.16.

[Note: The requirement concerning non-identification of Customers in Forecasts which was previously set out in subsection 5.6.4(b) of the MSA (now this subsection 5.6.5) is now incorporated under subsection 5.6.7 which shall specify any information that Access Providers may not request in Forecasts.]

5.6.55.6.6 **Forecast request:** An Access Provider may request an Access Seeker to provide, with a sufficient level of detail to enable the Access Provider to carry out Network planning and provisioning, the following information (**Forecast Information**):

- (a) the Facilities or Services or both in respect of which Forecasts are required;
- (b) the total period of time covered by each Forecast, which period:
 - i. shall be determined having regard to the Access Provider's own planning and provisioning cycles and the Forecasting

requirements which apply to the Access Seeker's own business units in using the relevant Facilities or Services; and

- ii. shall be the shorter of the period set out in the relevant Service Specific Obligations and the period of forecasting which the Access Provider provides to itself for Network planning and provisioning purposes no longer than one year, unless reasonably justified on grounds of the special Network management requirements of the relevant Facilities or Services;
- (c) the intervals or units of time to be used in making the Forecast, which shall be the shorter of the period set out in the relevant Service Specific Obligations and the intervals of time in which the Access Provider provides forecasting to itself no longer than three (3) months unless reasonably justified on grounds of the special Network management requirements of the relevant Facilities or Services;
- (d) the Network area or operational area to which Forecasts shall relate, which area shall correspond to that which the Access Provider uses for its own Network planning and provisioning;
- (e) the frequency with which a Forecast must be updated or further Forecast made, which shall be the longer of the period set out in the relevant Service Specific Obligations and the length of time after which the Access Provider provides itself updated or new Forecasts shall not be more frequently than every three (3) months unless reasonably justified on grounds of the special Network management requirements of the relevant Facilities or Services; and
- (f) such other information that the Access Provider reasonably requires in order to provide access to Facilities or Services requested by the Access Seeker (which shall not include any information that the Access Provider does not provide to itself in connection with forecasting for its own facilities and services).

5.6.65.6.7 Non-permitted information: The Access Provider must not request an Access Seeker to provide a Forecast that contains:

- (a) any information that is or would allow the Access Provider to infer any non-permitted information listed under subsection 5.4.16; or

(a)(b) any information that identifies or would enable the identification of Customers or particular Access Seeker services.

5.6.75.6.8 Forecast Provision: An Access Provider may only require an Access Seeker to provide Forecasts in accordance with a Forecast Request:

- (a) no sooner than four (4) weeks after receipt of a Forecast Request; and
- (b) until such time as the Access Provider notifies the Access Seeker in writing that it withdraws the relevant Forecast Request.

5.6.85.6.9 Use of Forecast Information: Forecast Information provided by the Access Seeker shall be treated by an Access Provider as the Confidential Information of the Access Seeker and shall only be used by those personnel of the Access Provider whose role is within either:

- (a) the Access Provider's wholesale or interconnection group; or
- (b) that part of the Network engineering group of the Access Provider responsible for interconnection.

for the purpose of responding to and planning for the Forecast and related Orders. The Access Provider must maintain records that indicate which persons are provided with access to Forecast Information and, on request from the Commission, provide a copy of such records certified by the Access Provider's Chief Executive Officer or Chief Operating Officer.

5.6.95.6.10 Distribution of Forecast Information: An Access Provider may only distribute Forecast Information of an Access Seeker outside the groups of people referred to in subsection 5.6.9 if:

- (a) the Forecast Information of the Access Seeker is aggregated with Forecasts provided by other Operators and the Access Provider's own requirements (so as to protect the confidentiality of the Forecast Information); and
- (b) the Forecast Information or its use does not otherwise identify the Access Seeker in any manner.

5.6.105.6.11 Time for acceptance: The Access Provider must notify the Access Seeker within five (5) Business Days of receiving a Forecast whether or not the

Access Provider considers the Forecast complies with the Forecast Request and:

- (a) ~~within five (5) Business Days of receiving the Forecast~~ if, the Access Provider considers that the Forecast does not comply with thea Forecast Request, to specifying in that notice the additional information which the Access Seeker is to provide to comply with the Forecast Request; and/or
- (b) if, the Access Provider considers that the Forecast does comply with the Forecast Request, to specifying in that notice within fifteen (15) Business Days of receiving a Forecast which complies with the Forecast Request, that the Forecast is provisionally accepted subject to verification of the details of the Forecast and the matters set out in paragraphs 5.6.12(a) to 5.6.12(d).

~~5.6.11~~5.6.12 **Reasons for rejection:** An Access Provider may only reject a Forecast following provisional acceptance where the Access Provider reasonably believes that the Forecast is inaccurate or, having regard to:

- (a) total current usage of the Facilities or Services;
- (b) the current rate of growth of the Access Seeker's usage of the Facilities or Services;
- (c) the current rate of growth of total usage of the Facilities or Services; and
- (d) ~~subject to subsection 5.4.19,~~ subject to subsections 5.7.31 and 5.7.32, the amount of capacity in the Facilities or Services that the Access Provider currently has available and can reasonably provision for the Access Seeker over the Forecast period, which must be at least equivalent ~~to that~~ that which the Access Provider can reasonably provision for itself.

~~5.6.12~~5.6.13 **Time for rejection:** The Access Provider must give notice of any rejection of a Forecast to the Access Seeker:

- (a) within fifteen (15) Business Days of receipt of the relevant Forecast; and

- (b) ~~S~~uch notice of rejection must specify:
- i. the grounds on which the Access Provider rejects the Forecast in accordance with subsection 5.6.12, at a sufficient level of detail to enable the Access Seeker to understand the basis of the rejection and to undertake its own re-assessment of the Forecast; and
 - ii. an offer to meet within five (5) Business Days of the notice of rejection of the Forecast to discuss the reasons for rejection and alternative methods of compliance. The meeting shall take place between the Access Provider and Access Seeker if the offer is accepted by the Access Seeker. ~~(Rejection Notice).~~

(Rejection Notice).

~~5.6.13~~**5.6.14 Reconsideration by Access Seeker:** The Access Provider must allow an Access Seeker to reconsider its Forecast following a Rejection Notice and allow the Access Seeker, within twenty-one (21) Business Days of receipt of a Rejection Notice, either:

- (a) to confirm its rejected Forecast, and explain why the Access Seeker ~~regards the Forecast as being reasonable~~ considers that the Access Provider is obliged to accept the Forecast under this Standard; or
- (b) to submit a new Forecast which the Access Seeker regards as meeting the Access Provider's concerns.

~~5.6.14~~**5.6.15 Reconsideration by Access Provider:** The Access Provider shall reconsider any re-submitted or amended Forecast provided pursuant to subsection 5.6.14 and subsections 5.6.11 to 5.6.13 shall re-apply.

~~5.6.15~~**5.6.16 Recovery for over-Fforecasting:** An Access Provider shall not seek to recover any costs or expenses incurred due to its acceptance of a Forecast from an Access Seeker if the Forecast is not met by the Access Seeker unless:

- (a) such costs and expenses were reasonably and necessarily incurred by the Access Provider;
- (b) the Access Provider reasonably seeks to mitigate its loss ~~over a six month period~~ (including through its own usage) provided the Access

Provider shall not be required to do so for any greater period than the relevant Forecast period; and

- (c) the Access Provider only recovers from the Access Seeker 75% of such costs and expenses which could not be mitigated under paragraph 5.6.16(b) above.

5.6.17 Meeting Forecasts: Subject to subsections 5.6.11 to 5.6.13, an Access Provider must carry out network planning in order to enable ~~the Forecasts Requested~~ to be met. If an Access Seeker has confirmed a ~~f~~Forecast under subsection 5.6.3, it will be binding on the Access Seeker.

5.7 ORDERING AND PROVISIONING OBLIGATIONS

5.7.1 Contact point or mechanism: The Access Provider shall designate and notify an Access Seeker of one or more of the following:

- (a) a person to whom Orders for access to Facilities and Services are to be delivered; and shall notify the Access Seeker of the designated person from time to time
- (b) a contact point to which Orders for access to Facilities and Services are to be delivered (such as an e-mail address); and
- (a)(c) a mechanism where Orders for access to Facilities and Services can be made (such as a web portal or B2B gateway), provided that if such a mechanism is the only method which the Access Provider provides for the receipt of Orders for that Facility or Service, the Access Provider cannot require the Access Seeker to invest in specialised technology or systems (such as an automated interface between the Operational Support Systems of the Operators).

5.7.2 Order content: Prior to access being provided, an Access Provider may require an Access Seeker to provide it with an Order which outlines the Access Seeker's access requirements. An Access Provider may request an Access Seeker to provide, at a level of detail (sufficient for planning and provisioning), the following information in an Order for access to Facilities and Services:

- (a) the Facilities or Services or both to which access is requested;
- (b) a requested date and time for delivery;

- (c) the location of the points of delivery;
- (d) Equipment of the Access Seeker to be used in connection with the Order, to the extent it may adversely affect the Access Provider's Network; and
- (e) such other information that the Access Provider reasonably requires in Order for it to plan for the provision of access to the Facilities or Services as requested by the Access Seeker provided that such information shall not include any information which:
 - i. the Access Provider does not require from itself for similar provisioning;
 - ii. identifies, or which enables the identification of, a Customer or Access Seeker services; or
 - iii. is non-permitted information under subsection 5.4.16.

5.7.3 Use of ordering information: Ordering information provided by the Access Seeker shall be treated by an Access Provider as the Confidential Information of the Access Seeker and shall only be used by those persons within the Access Provider whose role is within:

- (a) the Access Provider's wholesale or interconnection group; and
- (b) that part of the Network engineering group of the Access Provider responsible for interconnection,

for the purpose of responding to and provisioning for the Order.

5.7.4 Treatment of Orders and Service Qualifications: An Access Provider shall:

- (a) establish a single queue for all Orders and Service Qualifications for a given type of Facility or Service, whether those Orders and Service Qualifications are required for itself or any Access Seekers; and
- (b) give the equivalent same priority to the handling of all Orders from the Access Seeker and any Service Qualifications in each queue that may be required for that Access Seeker as it gives to its own Orders and Service Qualifications; and any Orders and Service Qualifications that

may be required for Customers who are similarly situated to the Access Seeker in all relevant respects

- (c) otherwise treat all Orders and Service Qualifications in each queue in compliance with its queuing policy established under subsection 5.7.29.

~~5.7.45.7.5~~ **Acknowledgment of receipt:** An Access Provider shall acknowledge receipt of ~~an~~the Order for Facilities or Services, in writing (or any other material or electronic form as agreed by the parties), within the period specified in the Service Specific Obligations for the purposes of this subsection 5.7.5two (2) Business Days of receipt of an Order from the Access Seeker.

~~5.7.55.7.6~~ **Notice of Receipt:** The Access Provider must include in its Notice of Receipt the following information:

- (a) the time and date of receipt;
- (b) a list of any additional information reasonably required by the Access Provider from the Access Seeker to clarify provision the Order; ~~and~~
- ~~(c)~~ if the relevant Facilities or Services available to the Access Provider are below the capacity required to provide the relevant Facilities or Services to the Access Seeker, the Access Provider shall inform the Access Seeker of the available capacity and timeframe for the fulfilment of the Order at the available capacity and (if relevant) with such augmentation as may be required to fulfil the Order as submitted;
- ~~(d)~~ whether the Access Provider needs to perform post-Order Service Qualification because information is not readily available to the Access Provider, for example in its Operational Support Systems, together with the reasons for needing to undertake the Service Qualification; and
- ~~(e)~~(e) the position of the Order in the Access Provider's queue.

~~5.7.65.7.7~~ **Further information:** The Access Provider shall allow the Access Seeker a period of up to fourteen (14) Business Days after a request for additional information under paragraph 5.7.6(b) to provide the Access Provider with such ~~additional reasonable information that is reasonably necessary to clarify an Order.~~

~~5.7.75.7.8~~ **Service Qualifications:** The Access Provider shall ~~make only conduct~~ Service Qualifications available to Access Seekers prior to placing Orders if such pre-Order Service Qualifications are undertaken for a given Facility or Service by the Access Provider for itself (for example, for marketing purposes in respect of HSBB Network Service-based services offered to Customers) and only conduct post-Order Service Qualifications if:

- (a) the Access Provider reasonably requires information from ~~post-Orders~~ such Service Qualifications ~~ss~~ which ~~are~~is not readily available, for example in its Operational Support Systems; and
- (b) the Access Provider notifies the Access Seeker that ~~thesuch~~ post-Order Service Qualifications are necessary (together with the reasons for needing to take such Service Qualifications) within five (5) Business Days of receiving the Access Seeker's Order at the time of providing (and as specified in) the Access Provider's Notice of Receipt under subsection 5.7.6, or, if further information has been requested under subsection 5.7.7, within two (2) five (5) Business Days of the expiry of the period in subsection 5.7.7, together with the reasons for such Service Qualifications.

For clarification, an Access Seeker may also seek the consent of the Access Provider to perform a Service Qualification itself, and such consent must not be unreasonably withheld.

~~5.7.85.7.9~~ **Completion of Service Qualifications:** The Access Provider shall complete and notify the Access Seeker of the result of any Service Qualification within the shorter of:

- ~~(a)~~ complete any Service Qualification in respect of an Order within twenty-one fifteen (2115) Business Days after the commencement of the Service Qualification; and
- ~~(a)(b)~~ the time within which the Access Provider performs and notifies the result of an equivalent Service Qualification undertaken for itself.
- ~~(b)~~ inform the Access Seeker of the result of any Service Qualification within two (2) Business Days of the completion of such Service Qualification.

5.7.10 Withdrawal of Order following Service Qualifications: An Access Provider shall permit an Access Seeker to withdraw its Order without penalty (irrespective of whether the Access Provider has accepted the Order or not) before the earlier of:~~within~~

(a) fourteen (14) days after the Access Seeker receives~~ing~~ the result of a Service Qualification under subsection 5.7.9; and

~~(e)~~(b) one (1) Business Day before the Access Provider commences civil works to provision the Order (where the civil works are required to provision the Facility or Service within the delivery timeframe specified in the Notice of Acceptance).

5.7.95.7.11 Acceptance obligation: An Access Provider must use its reasonable efforts to accept and fulfil Orders from the Access Seeker for Facilities and Services ~~and Facilities~~ which comply with a Forecast accepted by the Access Provider pursuant to subsection 5.6.

5.7.12 Time for acceptance/ or rejection: The Access Provider must notify the Access Seeker ~~within fourteen (14) days of receiving an Order~~ that anthe Order is accepted or rejected, within the shorter of the following timeframes:

(a) the specified timeframe in the Service Specific Obligations for the purposes of this subsection 5.7.12; and

~~(b) the timeframe within which it accepts or rejects equivalent such Orders for itself save where the Access Provider undertakes a Service Qualification as contemplated in subsection 5.7.8, in which case the time periods in subsection 5.7.9 are to be added to this fourteen (14) days period.~~

If the Access Provider notifies the Access Seeker that an Order is rejected, the Access Provider must advise the Access Seeker whether~~if~~ the Access Provider~~it~~ would be able to accept the Order in a modified form.

5.7.105.7.13 Notice of a Acceptance: An Access Provider's Nnotice of Aacceptance to the Access Seeker must contain the following information:

(a) the delivery date or activation date (as applicable), which must be the date that is requested by the Access Seeker, or, if that date cannot be

met by the Access Provider, ~~then must be~~ no later than the shortest of the following timeframes:

i. the indicative delivery timeframe or activation timeframe specified in the Service Specific Obligations for the purpose of this subsection 5.7.13; and

ii. the period of time taken by the Access Provider to deliver, or activate, such Facilities or Services for itself;

(b) the date when civil works (if any) are intended to commence;

~~(a)(c)~~ the charges applicable to the fulfilment of the Order;

~~(b)(d)~~ such information as is reasonably necessary for the Access Seeker to benefit from access to the ~~Facilities or Services~~ network services or network facilities; and

~~(e)(e)~~ the validity period, which shall be ~~a period that is not shorter less~~ than ninety (90) days ~~commencing on from~~ the date of ~~acceptance~~ the Notice of Acceptance (Validity Period).

5.7.14 Indicative Commencement of delivery timeframes: The applicable delivery timeframe for an Order, as determined under paragraph 5.7.13(a), shall commence from For the purposes of paragraph 5.7.13(a), the following are the ~~indicative delivery timeframes for the following aspects of a Facilities or Services:~~

Order type	Indicative delivery timeframes
All Orders involving the provision of new Facilities and infrastructure relevant to the Services that are the subject of the Order	8 Months
All Orders involving augmentation of capacity on existing Facilities and infrastructure relevant to the Services that are the subject of the Order	60 days

~~(a) where the Access Seeker's confirmation of an Order is required under subsection 5.7.15, the date the Access Seeker confirms the Order in accordance with that subsection; and The indicative delivery timeframes specified in subsection 5.7.14 shall commence from the date the Access Seeker confirms an Order in accordance with subsection 5.7.15.~~

~~(d)(b) in any other case, from the start of the Validity Period. Where a delay in the delivery of an Order is caused by the Access Seeker, the delivery date specified in the confirmed Order or indicative delivery time set out above shall be extended for a further period as may be reasonably necessary by the Access Provider.~~

5.7.15 Access Seeker confirmation: ~~Where the Access Seeker's confirmation is required for the Access Provider to proceed with fulfilling an Order, the Access Provider shall permit the Access Seeker to provide its confirmation its agreement to proceed with the Order within the Validity Period and shall not provision the Order until the confirmation is received of the Access Provider's acceptance of such Order (as described in subsection 5.7.13(d). Upon receipt of such confirmation, the Access Provider shall fulfil the Order in accordance with the Notice of acceptance provided under subsection 5.7.13.~~

[Note: MCMC is considering whether the Service Specific Obligations should prescribe whether or not Access Seeker's confirmation of Orders is required and/or whether Access Seeker's confirmation of Orders should apply by default with an option to agree otherwise. See the PI Paper at section 18.24 for discussion.]

~~5.7.14~~**5.7.16 Estimated charges:** If the Notice of Acceptance provided by the Access Provider ~~under subsection 5.7.13~~ contains estimates of charges (e.g. based on time and materials):

- (a) the Access Provider shall not exceed the estimate without providing the Access Seeker with written notice prior to exceeding the estimate that:
 - i. the estimate will likely be exceeded;
 - ii. an explanation of the reasons for exceeding the estimate; and
 - iii. a further estimate of the charges for the work necessary to fulfil the Order;

- (b) the Access Provider shall permit the Access Seeker to withdraw the Order without penalty ~~if the revised estimate exceeds the original estimate by more than 10% of the original estimate~~ within fourteen (14) days of the notice given by the Access Provider under paragraph 5.7.16(a) if the revised estimate in that notice exceeds the original estimate by more than 10%;
- (c) where the actual cost incurred by the Access Provider exceeds an estimate or revised estimate for a specific scope of work provided by the Access Provider due to:
- i. information or facts provided by the Access Seeker which are inaccurate or erroneous or not disclosed by the Access Seeker; ~~and~~or
 - ii. a change in the scope of work by the Access Seeker.
- ~~but in no other circumstances,~~ the Access Seeker shall be obliged to pay the Access Provider for the actual cost incurred; ~~and-~~
- (d) ~~The~~ Access Provider shall commence work after the Access Seeker confirms that it is agreeable to the estimate or revised estimate, such confirmation to be provided by the Access Seeker within ~~fourteen (14) days from the notice given by the Access Provider under subsection~~ the timeframe set out in paragraphs 5.7.13(e) or 5.7.16(b), as applicable.

~~5.7.12~~5.7.17 **Reasons for rejection:** An Access Provider may only reject an Order from an Access Seeker where:

- (a) subject to subsection 5.4.17 as if references to 'Access Request' in that subsection were references to 'Order', it is not technically feasible to provide access to the Facilities or Services requested by the Access Seeker;
- (b) subject to compliance with subsections 5.7.31 and 5.7.32, the Access Provider has insufficient capacity to provide the requested Facilities or Services;
- (c) subject to subsection 5.7.19, the Order is in excess of agreed Forecast levels;

- (d) the Order or variation request duplicates an Order awaiting fulfilment;
- (e) the Access Seeker has not obtained necessary related agreements from the Access Provider (e.g. Facilities access for a new Point of Interface);
- (f) there are reasonable grounds to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions of the Access Agreement and such concern cannot be addressed to the Access Provider's satisfaction, acting reasonably (e.g. through a security requirement in accordance with this Standard); or
- (g) there are reasonable grounds to believe that the Access Seeker would fail, in connection with the supply of the Facilities or Services to protect the integrity of a Network; or the safety of individuals working on, or using services supplied by means of, a Network or Equipment and such concern cannot be addressed to the Access Provider's satisfaction, acting reasonably (e.g. through the application of reasonable security or escorted access requirements).

5.7.135.7.18 Notice of rejection: An Access Provider's notice of rejection of an Order to the Access Seeker must:

- (a) set out the grounds on which the Access Provider rejects the Order, at a sufficient level of detail to enable the Access Seeker to understand the basis of the rejection and to undertake its own re-assessment of the Order; and
- (b) offer to meet, and meet if the offer is accepted by the Access Seeker, within five (5) Business Days of the notice of rejection of the Order to discuss the reasons for rejection and alternative methods of compliance.

5.7.145.7.19 Order in excess of Forecast: Notwithstanding paragraph 5.7.17(b), an Access Provider must use its reasonable efforts to provide sufficient capacity to enable the Access Provider to accept and fulfil Orders from an Access Seeker- for Facilities or Services or both which are in excess of the relevant Forecast. The Access Provider is only required to do so if, after meeting the Forecast requirements of other Operators and of its own business units, there is available capacity or the Access Provider could readily upgrade existing capacity. The Access Provider shall allocate the available capacity on a non-

discriminatory basis to meet the over Forecast requirements of the Access Seeker, other Operators and its own business units. An Access Provider is not required to supply Facilities or Services or both in excess of the Forecast if, despite adopting any reasonable improvements (including upgrading capacity), this would cause a material degradation in the quality of Forecast Facilities and Services provided to other Operators, or its own business, —or both. ~~For clarification when carrying out its obligations under this subsection 5.7.19, the Access Provider may have regard to its obligations under subsection 5.4.18.~~

5.7.155.7.20 Required extra capacity: An Access Provider may require an Access Seeker to procure ~~such~~ additional capacity on the Access Seeker's side of the Network as to the extent that the Access Provider, in good faith and reasonably estimates, that the Operators may be required by the Access Seeker require additional capacity to meet demand and a failure by the Access Seeker to procure that additional capacity may cause an adverse impact on the operation of the Access Provider's Network. Where the Access Seeker fails to so procure additional capacity and the demand exceeds the capacity on the Access Seeker's Network, the Access Provider must notify the Access Seeker in writing, and the Access Seeker and the Access Provider must meet (no later than five (5) Business Days after receipt of the notice from the Access Provider) to attempt to identify alternative sources of capacity. If the matter cannot be resolved within ten (10) Business Days of the date of that meeting, the Access Provider may bar or block calls to the Access Seeker's Network to the extent necessary to minimise congestion within the Access Provider's Network.

5.7.165.7.21 Other uses: An Access Provider shall permit capacity installed in connection with the provision of a network service to be used, to the extent technically feasible, in connection with another network service, at the Access Seeker's option.

5.7.175.7.22 Delivery dates: The Access Provider shall deliver the ordered access to Facilities or Services by the delivery date or activation date (as applicable) as specified in the Notice of Acceptance (as provided under subsection 5.7.13) or the extended delivery date (if any) as determined in accordance with subsection 5.7.24.

5.7.185.7.23 Early delivery dates: If the Access Provider, in the normal course of business, is able to offer a delivery date earlier than the delivery date that would otherwise apply, it must advise the Access Seeker and, if requested by the Access Seeker, deliver access to the relevant Facilities or Services or both at the earlier delivery date.

~~5.7.19~~5.7.24 **Delayed delivery dates:** Where there is a delay in the delivery of an Order, and An Access Provider shall:

(a) the delay is caused by the Access Provider:

- i. the Access Provider shall notify ~~the~~an Access Seeker of the delay to ~~the~~a delivery date ~~and the revised delivery date~~, together with the reasons for the delay, as soon as practicable after the Access Provider becomes aware of the possible delay;
- ii. the Access Provider shall permit the Access Seeker ~~notified under paragraph 5.7.24(a) above~~ to cancel the Order without penalty if the delay is longer than fourteen (14) days; and
- iii. the delivery date shall be extended for a further period as reasonably necessary and the Access Provider shall promptly notify the Access Seeker of the revised delivery date~~provide the Access Seeker with a remedy in accordance with subsection 5.7.33; or~~

(b) where the delay is caused by the Access Seeker:

- i. the Access Provider shall notify the Access Seeker of the delay to the delivery date as soon as practicable after the Access Provider becomes aware of it;
- ii. the Access Provider and Access Seeker must work together to minimise the delay; and
- ~~iv-~~iii. the delivery date shall be extended for a further period as reasonably necessary and the Access Provider shall promptly notify the Access Seeker of the revised delivery date.

~~5.7.20~~5.7.25 **Cancellation and variation of Orders:** An Access Provider shall allow an Access Seeker to cancel or vary an Order at any time subject to subsection 5.7.26.

5.7.26 **Cancellation or variation penalty:** Except where this Standard provides that cancellation of an Order is to be at no penalty;~~;~~

(a) the Access Provider may impose a charge for the cancellation or variation of the Order; and

(b) the charge which the Access Seeker is required to pay shall not exceed the lesser of the following amounts shall only charge an Access Seeker which has cancelled or varied an Order;

i. no more than the sum of costs necessarily incurred by the Access Provider as a result of in relation to the cancelled or variation; or Order

ii. an amount equal to the sum of charges that would have been payable by the Access Seeker in the six (6) months immediately following the cancellation or variation had the Order not been cancelled or varied;

and, reduced to the extent that by the level at which those costs have been mitigated, or would have been, mitigated (had the Access Provider used its best endeavours to do so) mitigated over a six (6) month period after the date of cancellation or variation.

5.7.21 **5.7.27 Testing and provisioning:** An Access Provider shall:

(a) co-operate with the Access Seeker in relation to the testing and provisioning of ordered Facilities or Services or both; and

(b) treat an Access Seeker's testing and provisioning on an equivalent basis to that which the Access Provider treats itself.

5.7.28 Resource charge: An Access Provider:

(a) may charge the Access Seeker a one-off fee, to be determined by reference to the costs incurred by the Access Provider, for allocation of manpower and other resources to enable the Access Seeker Access Provider to test and provide a new Facilities or Services for the purposes of fulfilling an Order; interconnection; and

(e)(b) must specify the methodology and unit costs for calculating any fees under paragraph 5.7.28(a) in its RAO.

~~5.7.22~~5.7.29 **Queuing policy:** An Access Provider shall establish ~~and demonstrate~~ and maintain a queuing policy ~~system for each Facility or Service~~ which:

- (a) shall be non-discriminatory;
- (b) ~~shall be applied to Orders and Service Qualifications of all Access Seekers and its own Orders and Service Qualifications for the same or similar Facilities and Services and~~ shall treat the Orders ~~and Service Qualifications~~ of Access Seeker-s on an equivalent basis to that which the Access Provider treats its own Orders ~~and Service Qualifications~~ for ~~the same or~~ similar ~~Facilities and~~ Services; and
- (c) shall seek to maximise the efficiency of its ordering and provisioning process.

~~5.7.23~~5.7.30 **Acceptance on queue:** An Access Provider shall promptly notify an Access Seeker, at the time of providing an acknowledgment of receipt of the Order under subsection 5.7.5 ~~(and as specified in the Notice of Receipt under subsection 5.7.6)~~, of their acceptance ~~of a~~, ~~and position in~~, the Access Provider's queue.

~~5.7.24~~5.7.31 **Constrained capacity:** If an Access Provider reasonably believes that the capacity in any Facilities or Services required by:

- (a) the Access Seeker pursuant to the relevant Forecast ~~and/or Order~~;
- (b) other Access Seekers, pursuant to their relevant Forecasts ~~and/or Orders~~; and
- (c) the Access Provider, for its own purposes,

would, in aggregate, exceed the capacity which the Access Provider will be in a position to be able to provide, the Access Provider must:

- (d) notify the Access Seeker and other persons to whom relevant capacity is supplied; and
- (e) allocate the available capacity between itself, the Access Seeker and other Access Seekers in accordance with the Access Provider's Capacity Allocation Policy.

~~5.7.25~~5.7.32 **Capacity Allocation Policy:** If the Access Provider claims or is likely to claim that it has insufficient capacity to meet an Access Seeker's Forecasts or Orders, the Access Provider shall maintain a Capacity Allocation Policy, which:

- (a) shall be disclosed, free of charge, to each Access Seeker upon entry into an Access Agreement, the Commission upon the Effective Date, to both Access Seekers with whom the Access Provider has an Access Agreement and the Commission each time it is amended, and any other Operator on request;
- (b) shall set out the principles in accordance with which the Access Provider shall determine how to allocate capacity between itself (including its related bodies corporate) and any other Operator or Operators, in circumstances where the amount of capacity available is less than the aggregate of capacity required by the Access Provider, its related bodies corporate and the other Operator or Operators; and
- (c) shall:
 - i. be fair and reasonable;
 - ii. be consistent, so far as practicable, with the Access Provider's general duty of non-discrimination in accordance with subsection 149(2) of the Act;
 - iii. treat the requirements of the Access Seeker and third parties on an equivalent basis to the Access Provider's own requirements; and
 - iv. allocate the available capacity in the relevant Facilities or Services or both in proportion to each Operator's Forecast and/or Order requirements.

~~5.7.26~~5.7.33 **Late delivery:** If an Access Provider fails to meet the delivery date or any extended delivery date notified to the Access Seeker any timeframe in accordance with paragraph 5.7.24(a)iii ~~subsection 5.7.14 with respect to the delivery of access to Facilities or Services pursuant to an Order made in accordance with subsection 5.7,~~ except where such failure has been caused solely by the Access Seeker's delay, that Access Provider shall, without limitation to any other rights the Access Seeker may have under subsection 5.7

or law, provide a rebate to the affected Access Seeker. The rebate shall be for an amount equivalent to the recurring charges payable for access to the Facilities or Services over a period equal to the period of the Access Provider's delay and the methodology and unit rates for calculating such rebates shall be set out in the Access Provider's RAO.

5.8 [NETWORK CONDITIONING OBLIGATIONS]

[Note: MCMC is considering incorporating the Network Conditioning Obligations (previously set out in subsection 5.8) into the Service Specific Obligations for O&T Services (see subsection 6.1 below). Please see the discussion at section 19 in the PI Paper.]

5.9 POINT OF INTERFACE PROCEDURES

5.8.15.9.1 **Interconnection:** Each Operator shall interconnect and keep its Network interconnected with the Network of another Operator in accordance with the terms of an Access Agreement with that Operator.

5.8.25.9.2 **Point of Interface locations:**

(a) Subject to subsection 0, each Access Provider shall publish on its publicly accessible website and keep updated a list of the general locations and technically feasible points:

- i. at which physical co-location is available;
- ii. in respect of which virtual co-location is available; and
- iii. in respect of which in-span interconnection is available on and from the date of publication for the following 12 months.

~~(b)~~ Due Subject to subsection 5.9.4, where required due to physical constraints, Access Providers should jointly agree with Access Seekers as to which Access Seekers should be given the right to physically co-locate at each POI and such access shall be granted on a non-discriminatory basis.

~~(b)~~(c) Where physical co-location cannot be granted to an Access Seeker, the Access Seeker shall be granted either virtual co-location or in-span interconnection.

~~(c) — The Access Seeker that is granted co-location rights shall offer virtual co-location or in-span interconnection to other Access Seekers.~~

~~5.8.3 **Virtual and in-span interconnection:** Each Operator shall offer virtual co-location or in-span interconnection at all technically feasible points.~~

~~5.8.4~~5.9.3 **Deemed Access Providers:** If an Access Seeker (referred to in this subsection 5.9.3 as the “**deemed Access Provider**”) obtains physical co-location at a Point of Interface from an Access Provider (referred to in this subsection 5.9.3 as the “**principal Access Provider**”), and the principal Access Provider is unable to provide virtual co-location or in-span interconnection as required under paragraphs 5.9.2(c), it shall be deemed to be an Access Provider for the purposes of this subsection 5.9.3 to subsection 0 (inclusive). to permit other Access Seekers to co-locate at the same place and such deemed Access Provider shall follow the same procedures in respect of permitting access as those required to be followed by the principal Access Provider in providing access. The deemed Access Provider shall be required to permit access to Access Seekers following the same procedures for permitting access as those required to be followed by the principal Access Provider. Within two (2) Business Days of reaching a co-location agreement with an Access Seeker, the deemed Access Provider must notify the principal Access Provider of the existence of the agreement and the identity of the Access Seeker the identity of all persons with whom it has reached co-location agreements within two (2) Business Days of reaching such agreements and must ensure that the Access Seekers such persons compliesy with the relevant co-location obligations contained in subsection 6.9 of this Standard. The deemed Access Provider shall be responsible to the principal Access Provider for all acts and omissions of any Access Seekers in connection with providing access to Facilities and Services under its co-location agreement.

5.9.4 **Lack of space:** If there are space constraints at a particular location, ~~the~~an Access Provider shall take reasonable steps to optimise its usage of the space, including through the upgrading of Facilities. If the Access Provider has used its best efforts to accommodate all Access Seekers, and it is not physically possible for any further Access Seekers to be accommodated, the Access Provider shall:

(a) notify the Commission of the lack of space at the location;

(b) provide any supplementary information which may be requested by the Commission (which may include physical inspections by the Commission); and

(a)(c) be excused from providing physical ~~interconnection~~ ~~co-location~~ at ~~that~~ ~~such~~ location unless and until the Commission notifies the Access Provider that the Commission considers that physical co-location can and must be provided, in which case the Access Provider shall provide physical co-location as directed by the Commission.

5.8.55.9.5 **Access Seeker requested Point of Interface:** An Access Provider shall reasonably consider a request by an Access Seeker to interconnect at a point other than that specified under subsection 5.9.2. The Access Provider shall promptly notify the Access Seeker whether it accepts or refuses ~~reject~~ a request by an Access Seeker under this subsection, and provide the Access Seeker with reasons if it refuses ~~rejects~~ the Access Seeker's request.

5.8.65.9.6 **Network responsibility:** Each Operator is responsible for the provisioning and maintenance of Facilities (including those Facilities which form part of the Interconnect Links and the transmission equipment) on its side of the Point of Interface.

5.8.75.9.7 **Third ~~p~~Party Point of Interface:** An Access Provider shall permit an Access Seeker to nominate a Point of Interface of a third ~~p~~Party for the purposes of interconnection and access between the Access Provider and the Access Seeker provided that the Access Seeker remains responsible for the costs of such interconnection and access and for the third ~~p~~Party's act and omissions at the Point of Interface.

5.8.85.9.8 **Point of Interface factors:** When determining which locations are to be listed under ~~paragraph~~ ~~subsection~~ 5.9.2(a), or when determining a request under subsection 5.9.5, each Access Provider must have regard to each of the following:

- (a) the Access Provider shall offer (but shall not require) POI and co-location for every Closed Number Area throughout Malaysia in which the Access Provider has network facilities;
- (b) in addition to offering POI and co-location in accordance with paragraph 5.9.8(a) above, the Access Provider shall offer interconnection and co-location at each ~~any~~ other technically feasible point;

- (c) the Access Provider shall offer physical co-location in at least one location for every Closed Number Area throughout Malaysia in which the Access Provider has network facilities, but may additionally offer other ~~more than one~~ forms of interconnection co-location in relation to a particular location (e.g. ~~physical interconnection and virtual interconnection co-location~~);
- (d) the Access Provider shall not reserve space other than for its own current needs, its future needs (calculated by use of a reasonably projected rate of growth over two (2) years) and the needs of other Access Seekers who are currently occupying or have ordered additional space from that Access Provider; and
- (e) any possible re-arrangement of its Equipment configuration to eliminate space inefficiencies.

5.9.9 Notice of refusal: If an Access Provider proposes to refuse, or refuses, a request for physical co-location from an Access Seeker on the basis of current or future needs of the Access Provider and/or the needs of other Access Seekers who are currently occupying or have ordered additional space from the Access Provider, it must also notify the Access Seeker and the Commission of:

- (a) the space currently used by the Access Provider;
- (b) the amount of space reserved for the Access Provider's future needs;
- (c) the space currently occupied by other Access Seekers;
- (d) the space ordered by other Access Seekers; and
- (e) the total amount of space potentially available but for the uses set out above.

5.8.95.9.10 Inter-Closed Number Area service: An Access Provider shall offer interconnection to permit calls to be transmitted across Closed Number Area boundaries, whether directly or in transit.

5.9.11 Security and critical national information infrastructure:

- (a) An Access Provider may decline to publish for national or operational security reasons information in connection with particular Points of Interface and other locations where Facilities are located, but in such circumstances, an Access Provider must:
- i. promptly provide such information to other Operators on request, subject only to the Operators entering into a confidentiality agreement in accordance with this Standard;
 - ii. offer to provide, and if the offer is accepted, provide, updated location details to such Operators as Points of Interface and Facilities are withdrawn, introduced and changed; and
 - iii. provide all such information to the Commission.
- (b) An Access Provider may establish reasonable security procedures and processes (such as identity checks) to apply to personnel of Access Seekers who will physically access Points of Interface or other locations where Facilities are located. However, such procedures and processes shall:
- i. not completely or substantially prohibit an Access Seeker from physically accessing a Point of Interface or other relevant location unless the Access Provider has been directed in writing to do so by the Government (in which case, the Access Provider shall notify the Commission); and
 - ii. be no more restrictive or onerous than the procedures and processes that the Access Provider imposes on its own personnel who physically access the same Points of Interface and locations.

5.9.10 DECOMMISSIONING OBLIGATIONS

5.9.15.10.1 Decommissioning notice: Except where an Access Provider is required to vacate ~~a the~~ site where a Point of Interface is located, or any other Facility or Service which relies on the Access Provider's use of that site, as a result of a third ~~p~~Party landlord's notice (under an arm's length tenancy agreement), an Access Provider must provide no less than:

- (a) one (1) year's notice in writing to all relevant Access Seekers prior to any the decommissioning of a Point of Interface; or
- (b) six (6) month's' notice in writing to all relevant Access Seekers prior to the decommissioning of any Facilities or Services which rely on the Access Provider's use of that site.

Where an Access Provider is required to vacate the site ~~where a Point of Interface is located~~ as a result of a third pParty landlord's notice (under an arm's length tenancy agreement), the Access Provider must provide all relevant Access Seekers with as much notice as possible in relation to the matters in paragraphs 5.10.1(a) and 5.10.1(b) above.

5.9.25.10.2 Co-operation: An Access Provider must co-operate and negotiate with all relevant Access Seekers in relation to the timetable for decommissioning of the relevant Point of Interface, Facilities or Services.

5.9.35.10.3 Alternative arrangements: An Access Provider which notifies an Access Seeker of its intention:

- (a) to decommission a Point of Interface, shall provide to the Access Seeker functionally equivalent interconnection at another Point of Interface on terms and conditions and at a recurring charge which are not disadvantageous to the Access Seeker, relative to the terms and conditions and recurring charge ~~applying applicable~~ in respect of the Point of Interface that is proposed to be decommissioned, for a period that is not less than three (3) years from the date of decommissioning; or
- (b) to decommission ~~another any other~~ Facilities or Services, shall provide to the Access Seeker access to ~~an~~ alternative Facilities or Services on terms and conditions and at a recurring charge which are not disadvantageous to the Access Seeker, relative to the terms and conditions and recurring charge ~~applying applicable~~ in respect of the Facilities or Services that is proposed to be decommissioned, for a period that is not less than three (3) years from the date of decommissioning.

5.9.45.10.4 Decommissioned Point of Interface compensation: An Access Provider shall pay the Access Seeker reasonable costs, necessarily incurred in:

- (a) decommissioning any links to the Point of Interface that is proposed to be decommissioned that are rendered, or will be, redundant by the proposed decommissioning;
- (b) installing or otherwise procuring links between the Point of Interface that is proposed to be decommissioned and the substitute Point of Interface to be provided pursuant to paragraph 5.10.3(a); and
- (c) the carriage of traffic between the Point of Interface that is proposed to be decommissioned and the substitute Point of Interface to be provided pursuant to paragraph 5.10.3(a) for a period that is not less than three (3) years from the date of decommissioning.

5.9.55.10.5 **Decommissioned Facilities/ or Service compensation:** Except where decommissioning is caused by Force Majeure, an Access Provider shall pay the Access Seeker's reasonable costs, necessarily incurred in:

- (a) moving the Access Seeker's Equipment from the decommissioned Facilities to ~~the~~ alternative Facilities offered in accordance with ~~subsection-paragraph~~ 5.10.3(b); or
- (b) re-arranging Equipment to connect to ~~the~~ alternative ~~network services~~ Services offered in accordance with ~~subsection-paragraph~~ 5.10.3(b).

5.105.11 **NETWORK CHANGE OBLIGATIONS**

5.10.15.11.1 **Scope:** This subsection 5.11 applies where an Operator proposes to implement a Network Change of a type referred to in subsection 5.11.2 which necessitates a change in the hardware or software (including interface software) of the other Party's Network in oOrder to ensure the continued proper operation and compatibility of the Parties' respective Networks, services and procedures.

5.10.25.11.2 **Types of changes:** The following kinds of proposed Network Changes may be within the scope of subsection 5.11.1:

- (a) any change by the Party proposing to make the change (**Notifying Party**) to any technical specification of the interconnection interface between their respective Networks (**Interface Change**);

(b) any change by the Notifying Party to any technical specification or characteristic of the Facilities or Services to which the other Party (**Recipient Party**) has access which will or might affect:

- i. the Recipient Party's Network; or
- ii. the Recipient Party's use of the Facilities or Services provided by the Notifying Party, ~~(Service Change);~~

(Service Change);

(c) any change by the Notifying Party to any technical specification or characteristic of that Notifying Party's Network which will or might affect the Recipient Party's Network (**Network Change**);

(d) any change by the Notifying Party to any of the Operational Support Systems used in inter-carrier processes, including without limitation:

- i. the billing system;
- ii. the Ordering and provisioning systems; or
- iii. the Customer Churn process, ~~(OSS Change); and~~

(OSS Change); and

(e) any enhancement by the Notifying Party of the features, functions or capabilities of the Facilities or Services to which the Recipient Party has access, which enhancement the Notifying Party proposes to make available either:

- i. to itself; or
- ii. to any other Operator, ~~(Functionality Change)~~

(Functionality Change),

(collectively, **Relevant Changes**).

5.10.35.11.3 Notification of change: If a Notifying Party proposes to make a Relevant Change to its Network, services or procedures, the Notifying Party shall provide the Recipient Party with notice in writing (**Change Notice**) of:

- (a) the nature, effect, technical details and potential impact on the Recipient Party's Network of the proposed Relevant Change, described at a sufficient level of detail to enable the other Party to identify and begin planning such changes as may be necessary or desirable for the Recipient Party to make to its Network, services or procedures in consequence of the Relevant Change; and
- (b) a date, which shall be no later than ten (10) Business Days from the date of the notice under this ~~clause~~ subsection, on which representatives of the Notifying Party will be available to discuss with representatives of the Recipient Party the proposed Relevant Change and the changes that may be necessary or desirable for the Recipient Party to make to its Network, services or procedures in consequence of the Relevant Change,

as soon as reasonably practicable and, in any event, with not less than the relevant notice period set out in the table below:

Relevant Change:	Notice period:
Interface Change	3 months
Network Change	3 months
Service Change	3 months
OSS Change	3 months
Functionality Change	3 months

5.10.45.11.4 Post-notification procedures: The Notifying Party shall:

- (a) meet with representatives of the Recipient Party on the date set out in the Change Notice or as soon as practicable thereafter (but no later than the notice period set out in the table in subsection 5.11.3), for the purpose of discussing the Relevant Change and any changes that may be necessary or desirable for the Recipient Party to make to its Network, services or procedures in consequence of the Relevant Changes;

- (b) provide any additional information reasonably requested by the Recipient Party no later than ten (10) Business Days after the Recipient Party's request for such additional information; and
- (c) take reasonable account of concerns raised and proposals made by the Recipient Party to minimise any adverse impact of the Relevant Changes on the Recipient Party and revise the Change Notice accordingly.

5.10.55.11.5 Testing: A Notifying Party shall, bearing its own costs in doing so:

- (a) co-operate with a Recipient Party ~~in relation to the development of~~ procedures for testing the impact of the Relevant Changes on the proper operation and compatibility of the Parties' respective Networks; and
- (b) jointly carry out testing with the Recipient Party in a timely manner, using its best endeavours to accommodate any timing requested by the Recipient Party and, in any case, no less than twenty (20) Business Days before the Notifying Party proposes to effect the Relevant Changes. The testing shall be conducted in accordance with the testing procedures developed under paragraph 5.11.5(a).

5.10.65.11.6 Testing failure: Subject to the Recipient Party having co-operated with the Notifying Party in relation to the conduct of tests under subsection 5.11.5, if such tests:

- (a) are not accepted by ten (10) Business Days prior to the date when the Notifying Party proposes to effect the Relevant Changes; or
- (b) do not provide reasonable assurance of the continued proper operation and compatibility of the Parties' respective Networks, services and procedures, the Notifying Party must postpone implementation of the Relevant Changes. The period of postponement will be the period necessary to allow the Parties to repeat the steps in subsections 5.11.3 to 5.11.5 above.

5.145.12 [EQUAL ACCESS OBLIGATIONS]

[**Note:** subsection 5.12 (Equal Access Obligations) was deleted in accordance with section 3(l) of the Variation to Commission Determination on the Mandatory Standard on Access (Determination No. 2 of 2005), Determination No. 2 of 2009.]

5.125.13 [NETWORK FACILITIES ACCESS AND CO-LOCATION]

[**Note:** Subsection 5.13 (Network Facilities Access and Co-Location) is now incorporated under subsection 6.9 (Network Co-Location). See the PI Paper at section 23 for discussion regarding the Network Co-Location Service.]

5.135.14 BILLING AND SETTLEMENT OBLIGATIONS

5.13.15.14.1 **Invoices:** An Access Provider shall use its best endeavours to issue to the Access Seeker an Invoice in writing or in electronic form (as requested by the Access Seeker) within thirty (30) days of the end of ~~each~~ Billing Cycle in accordance with subsection 5.14.3 Billing Period for amounts due in respect of the supply of Facilities or Services during ~~the relevant~~ such Billing Period or Billing Periods.

5.13.25.14.2 **Currency:** Unless otherwise agreed by the Access Provider and Access Seeker in an Access Agreement, an Access Provider shall state all Invoices in Ringgit Malaysia and payment shall be made by the Access Seeker in Ringgit Malaysia.

5.13.35.14.3 **Billing Cycle:** ~~A~~ An Access Provider shall issue Invoices in ~~monthly~~ accordance with the Billing Cycles specified in the Service Specific Obligations, except where ~~unless a different Billing Cycle is~~ otherwise agreed with the Access Seeker in an Access Agreement.

5.13.45.14.4 **Billing verification information:** An Access Provider shall provide, with each Invoice, such information as may be reasonably necessary for the Access Seeker to verify rates and charges contained in an Invoice.

5.13.55.14.5 **Other Billing information:** An Operator must provide to any Operator with which it interconnects, information within its possession that is reasonably necessary to allow the other Operator to provide accurate and timely billing services to itself, its affiliates, ~~or~~ other Operators and Customers.

5.13.65.14.6 Summarised Invoice and billing information: An Access Provider shall provide the Access Seeker, on written request, with an aggregated summary of billings for access to the Facilities and Services provided to the Access Seeker, in monthly tranches.

5.13.75.14.7 Billing error: If an Operator discovers an error in an Invoice, it must promptly notify the other Operator. The Operator which made the error must make necessary adjustments to correct that error in the next Invoice within thirty (30) days of notification.

5.13.85.14.8 Time for payment: Subject to subsection 5.14.11, an Access Provider shall allow an Access Seeker no less than thirty (30) days from the date of receipt of an Invoice for the Access Seeker to make the payment. This subsection 5.14.8 should not be construed as preventing an Access Provider from granting a discount to an Access Seeker as an incentive to make early payments.

5.13.95.14.9 Method of payment: An Access Provider shall allow an Access Seeker to pay an Invoice by bank cheque or electronic funds transfer directly to an account nominated by the Access Provider.

5.13.105.14.10 No set-off: Unless otherwise agreed by the Access Provider and Access Seeker in an Access Agreement, an Access Provider may not set-off Invoices, except where the Access Seeker is in liquidation or at least three (3) Invoices have been issued and such Invoices have not been paid (excluding disputed amounts).

5.13.115.14.11 Withholding of disputed amounts: An Access Provider shall allow an Access Seeker to withhold payment of any amount disputed in good faith by the Access Seeker if:

- (a) the Access Seeker notifies the Access Provider within twenty-one (21) days from the date of receipt of the Invoice of such dispute (unless otherwise agreed in an Access Agreement); and
- (b) the Access Seeker's notification specifies the information referred to in subsection 5.14.13.

5.13.125.14.12 Billing Disputes: An Access Provider shall allow an Access Seeker to dispute any amount in an Invoice if:

- (a) in the case of domestic calls and interconnection, the Access Seeker notifies the Access Provider within forty-five (45) days after the date of receipt of such Invoice;
- (b) in the case of outgoing and incoming international calls and interconnection, the Access Seeker notifies the Access Provider within six (6) months after the date of receipt of such Invoice; and
- (c) in case of any other Facilities and Services, the Access Seeker notifies the Access Provider within forty-five (45) days after the date of receipt of such invoice.

and, in ~~either any~~ case, the Access Seeker's notification specifies the information referred to in subsection 5.14.13.

~~5.13.13~~5.14.13 **Notification of Billing Dispute Notification:** An Access Provider may require an Access Seeker to provide the following information when disputing any amount in an Invoice:

- (a) the reasons for which the ~~Invoiced Party disputes the~~ Invoice is disputed;
- (b) the amount in dispute;
- (c) details required to identify the relevant Invoice and charges in dispute including:
 - i. the account number;
 - ii. the Invoice reference number;
 - iii. the Invoice date;
 - iv. the Invoice amount; and
 - v. billing verification information; and
- (d) evidence in the form of ~~the Invoiced Party's outgoing~~ report, indicating the relevant traffic data which is in dispute.

~~5.13.14~~5.14.14 **Billing Dispute Resolution:** An Access Provider and an Access Seeker must comply with the Dispute Resolution Procedures applicable to Billing Disputes.

~~5.13.15~~5.14.15 **Interest:** ~~Subject to~~ Except for any amount in an Invoice being disputed by an Access Seeker in good faith in accordance with subsection 5.14.12, an Access Provider may charge interest on any amount outstanding from an Access Seeker from time to time, in respect of that overdue sum for the period beginning on its due date and ending on the date of the receipt of the overdue sum by the Access Provider. The interest that may be charged by the Access Provider shall be at the rate of 1% per annum above Malayan Banking Berhad Base Lending Rate calculated daily from the due date until the date of actual payment. Payments which are overdue by more than sixty (60) days will bear interest at the rate of 2% per annum above Malayan Banking Berhad Base Lending Rate calculated from the due date until the date of receipt by the Access Provider of full payment. For clarification, an Access Provider shall not charge interest on an amount which is disputed by an Access Seeker in good faith.

~~5.13.16~~5.14.16 **Backbilling:** Unless otherwise agreed by the Access Provider and Access Seeker in an Access Agreement, ~~thean~~ Access Provider may include omitted or miscalculated charges from an earlier Invoice in a later Invoice, or issue an Invoice for charges which have previously not been invoiced provided that the Access Provider is able to substantiate the charges to the Access Seeker and such inclusion, amendment or issuance is made within three (3) months from the end of the Billing Period in which the calls were made or in which other service-Facilities or Services were provided.

5.14.17 **Provisional billing:** Where an Access Provider is unable to issue an Invoice within thirty (30) days after the end of the Billing Cycle in accordance with subsection 5.14.1, it may issue an Invoice to an Access Seeker for a provisional amount, based on the last Invoice (~~p~~**Provisional Invoice**). In such circumstances, ~~thean~~ Access Provider may ~~i~~Invoice ~~thean~~ Access Seeker for a provisional amount for a period of not more than three (3) successive Billing Periods, provided the total provisional amount ~~of the provisional Invoice~~ is no more than the average of the most recent three (3) Invoices. Where there have not been three (3) past Invoices for access to the relevant Facilities or Services~~network facilities or network services~~, the Access Provider may issue a ~~p~~**Provisional Invoice** up to the full value of the amount based on the most recent Invoice. ~~The provisional Invoice will be adjusted in the next Invoice or as soon as practicable but not later than sixty (60) days after the calendar~~

~~month in which the charges were incurred or such other time period as may be agreed in writing.~~

~~5.13.175.14.18~~ **Adjustment Period:** Where a Provisional Invoice is issued by the Access Provider, within the next sixty (60) days or such other time period as may be agreed in writing (Adjustment Period), the Access Provider must issue an Invoice for the actual amount due for access to the relevant Facilities or Services. If that Invoice for the actual amount is not issued within the Adjustment Period, the invoiced Operator shall treat the provisional amount as the actual amount. If the actual amount for a particular Billing Period is higher than the provisional amount for the Billing Period, then the invoiced Operator will pay in full such difference (free of interest) within thirty (30) days from the receipt of the actual Invoice to the invoicing Operator. If the actual amount for a particular Billing Period is lower than the provisional amount for the Billing Period, then the invoicing Operator will reimburse in full such difference (free of interest) within thirty (30) days from the receipt of the actual Invoice to the invoiced Operator.

~~5.145.15~~ **OPERATIONS AND MAINTENANCE OBLIGATIONS**

~~5.14.15.15.1~~ **Operations &and maintenance responsibility:** Each Operator shall be responsible for the operations and maintenance of its own ~~F~~facilities and ~~S~~services.

~~5.15.2~~ **Fault reporting systems:** Each Operator shall establish and maintain a fault reporting service that allows Customers who are directly connected to the Network of that Operator and to whom that Operator supplies ~~S~~services (inter alia), to:

~~(a)~~ report faults relating to any Network, Facility or Service support system;
and

~~(a)(b)~~ obtain updates about any faults affecting the Customer.

~~5.14.25.15.3~~ **Customer notification:** Each Operator will advise all of its directly connected Customers to report all faults to the fault reporting service described in subsection 5.15.2.

~~5.14.35.15.4~~ **Non-discriminatory fault reporting and identification:** An Operator shall perform fault reporting and identification on a non-discriminatory basis.

5.14.45.15.5 Cross-referrals: If a Customer reports a fault to an Operator:

- (a) when the Customer is directly connected to another Operator; or
- (b) which clearly relates to a Network, Facility or Service support system of another Operator, ~~that~~ Operator which receives the report shall must promptly inform the other Operator of the reported fault, or refer that Customer to the other Operator's fault reporting service.

5.15.6 Network fault responsibility: The Operator in whose Network the fault occurs is responsible for rectifying it and restoring services including for the purpose of restoring the supply of Facilities and Services (such as Transmission Services or HSBB Network Services) which are used in another Operator's Network. ~~Transmission service faults: The Operator that supplies transmission services is responsible for maintaining and repairing that transmission service, notwithstanding that the transmission service may be used in another Operator's Network.~~

[Note: The MCMC proposes to incorporate the current subsection 5.15.7 (Transmission service faults) into subsection 5.15.6 (Network fault responsibility) which already applies more broadly to Facilities and Services other than transmission services. This amendment is not intended to change Operators' obligations to maintain and repair transmission services used in other Operators' Networks.]

5.14.55.15.7 Major inter-working faults: If a major fault occurs which affects a communication that crosses or is to cross both Operator's Networks, initial responsibility for identifying the fault rests with the Operator who first becomes aware of the fault.

5.14.65.15.8 Faults affecting other Networks or Equipment: If an Operator identifies a fault occurring in its Network or with its network facilities which may have an adverse effect on ~~the other~~ another Operator's Network, network facilities, network services or Equipment, the first-mentioned Operator must promptly inform the other Operator of:

- (a) the existence of the fault;
- (b) the actions being taken by the first mentioned Operator to restore service and to further identify and rectify the fault; and

(c) the outcome of those actions.

5.14.75.15.9 Bear own costs: Each Operator is responsible for establishing and maintaining a fault reporting service at its own cost irrespective of the location of the fault.

5.14.85.15.10 Fault priority: Each Operator shall give priority to faults ~~which have in~~ the following order:

(a) the highest service loss impact in terms of the number of Customers affected; ~~or~~

(b) those which have been reported on previous occasions and have re-occurred; and

(b)(c) all other faults.

5.14.95.15.11 Fault rectification: Each Operator shall rectify faults on a non-discriminatory basis.

5.14.105.15.12 Target times: Each Operator shall respond to and rectify faults of a type listed in the following table in accordance with the ~~corresponding relevant~~ response timeframes, progress update frequencies and rectification time-frames:

Priority Level	Fault Types (examples)	Response Timeframe	<u>Progress Update Frequency</u>	<u>Rectification</u> <u>storation</u> <u>Timeframe</u>
Level 1	1. Major switch outage 2. Transmission bearer total outage 3. Route blocking > 30% 4. Major signalling problem 5. Major routing issues 6. Fraudulent calls	Within 1 hr	<u>Every 1 hr</u>	4 hrs
Level 2	1. Minor switch outage 2. Minor routing issue 3. Minor signalling problems 4. Route blocking 10%-30% 5. Cross line & silent calls	Within 4 hrs	<u>Every 4 hrs</u>	24 hrs

Priority Level	Fault Types (examples)	Response Timeframe	Progress Update Frequency	Rectification Timeframe
Level 3	1. Faults affecting single or small number of Customers 2. Route blocking <10%	Within 24 hrs	Every 24 hrs	72 hrs
Level 4	1. Remote Congestion 2. External Technical Irregularities (ETI) 3. Other performance related issues	Within 48 hrs	Every 48 hrs	14 days

Explanatory Notes to subsection 5.15.12:

- (a) All faults reported shall be ascribed with a “Priority Level” as set out in the above table for response and ~~rectification~~~~restoration~~ purposes and the Operators involved shall cooperate with one another to achieve the ~~given target~~ ~~timeframes~~ ~~targets~~ ~~corresponding~~ ~~based~~ ~~to~~ ~~on~~ the severity of the fault reported as set out in the above table.
- (b) ~~Some of the common~~ “Fault Types” ~~are listed in the above table are only~~ examples of possible types of faults. Operators are required to categorise all faults by reference to the specified “Priority Levels”, “Response Timeframes” and “Rectification Timeframes” in the above table. [Note: The MCMC is considering whether further examples or alternative fault response and rectification timeframes are required in the Service Specific Obligations in section 6 of the Standard. Please see sections 25.2 and 25.3 of the PI Paper.]
- (c) “Response Timeframe” refers to the timeframe for the Operator whose Network, Facility or ~~service~~ ~~Service~~ is faulty to respond to and appropriately attend to the fault. Response Timeframes are to be measured from either the time the fault is notified by the other Operator or from the time when the Operator first becomes aware of the ~~F~~fault, whichever is the earlier.
- (d) “~~Rectification~~~~restoration~~ Timeframe” refers to the time taken by the Operator to ~~restore~~ ~~rectify~~ a faulty Network, Facility or Service and is determined by the period between the reporting of a fault to the ~~relevant~~ ~~pective~~ ~~IFRC/NMC~~ ~~fault reporting service~~ of the Operator and the ~~rectification~~ ~~restoration~~ of the faulty ~~service~~ on a permanent or temporary basis (provided that if rectified on a temporary basis, the Operator must continue attempting to achieve a permanent rectification without delay).

5.14.115.15.13 Planned maintenance: If an Operator (**Maintenance Operator**) intends to undertake planned maintenance which may affect an Access Seeker’s Network, Facilities or Services, the Maintenance Operator must:

- (a) provide at least the greater of the time which it notifies its own Customers and ten (10) Business Days' notice of the planned maintenance;
- (b) use its reasonable endeavours to minimise any disruption to the carriage of communications which cross or are to cross both Operators' Networks, and which are caused by the maintenance or re-routing; and
- (c) where the Operators agree that it is practicable, ~~and agreed by the Operators,~~ provide alternative routing or carriage at no additional cost to the Access Seeker.

5.14.125.15.14 Planned maintenance windows: An Operator shall undertake planned maintenance within windows of time agreed with other Operators, and where the windows of time for such planned maintenance have the least effect on end-users.

5.14.135.15.15 Emergency maintenance: If an Operator (**Maintenance Operator**) needs to undertake emergency maintenance which may affect the other Operator's Network, the Maintenance Operator must, if it is able to:

- (a) provide at least twenty-four (24) hours' notice of the planned maintenance;
- (b) use its reasonable endeavours to minimise any disruption to the carriage of communications which cross or are to cross both Operators's Networks, and which are caused by the maintenance or re-routing; and
- (c) where the Operators agree that it is practicable, ~~and agreed by the Operators,~~ provide alternative routing or carriage at no additional cost to the other Operator.

5.14.145.15.16 Hours of fault reporting and rectification: An Access Provider shall maintain a twenty-four (24) hours a day, seven (7) days a week fault reporting and rectification service.

5.14.155.15.17 Complaints Handling: The Operators must report all interconnection outages that relate to Networks, Services and/or Facilities and/or Services to the Access Provider's relevant~~respective~~ Fault Reporting Centre fault reporting and rectification service.

~~5.14.16~~5.15.18 **Routine Testing:** The Operators shall conduct interconnection service tests at agreed half yearly intervals to ensure the maintenance of interconnection services at agreed services levels in accordance with standards as agreed by both parties or such other standards as may be determined by the Commission.

~~5.15.16~~ **TECHNICAL OBLIGATIONS**

~~5.15.15~~5.16.1 **Compliance:** Operators shall adhere to the relevant guidelines issued by the Commission from time to time to the extent that they have not been expressly revoked ~~or~~and are not inconsistent with any technical obligations set out in this Standard.

~~5.15.25~~5.16.2 **Prevention of technical harm:** An Operator must take reasonable measures to ensure that ~~the~~ interconnection and access ~~does~~ not cause physical or technical harm to the other Operator's Network, which measures shall be no less robust than the measures which the Operator takes in respect of new Facilities or Equipment incorporated into its own Network.

~~5.15.35~~5.16.3 **Technical Standards:** An Operator must comply with any applicable technical Standard adopted by the Commission under Chapter 3 of Part VII of the Act.

~~5.15.45~~5.16.4 **No Interference:** An Operator must not do anything, or knowingly permit any third person to do anything, in relation to ~~a~~Network, network facilities, network services or Equipment which:

- (a) causes interference; or
- (b) materially obstructs, interrupts or impedes the continuous use or operation of, the Network, network facilities, network services or Equipment of another Operator.

~~5.15.55~~5.16.5 **Notice of interference and rectification:** If an Operator (**Notifying Operator**) notifies another Operator that the other Operator's Network, network facilities, network services or Equipment is causing interference to the Notifying Operator's Network, network facilities, network services or Equipment:

- (a) the other Operator shall rectify the situation as soon as possible and, in any case, so that no interference is caused within twenty-four (24) hours of receiving notice from the Notifying Operator; or

- (b) if the other Operator is not able to locate the source of the interference within twenty-four (24) hours under paragraph 5.16.5(a), the other Operator shall promptly notify the Notifying Operator, and both Operators shall meet as soon as possible, and in any case, within twenty-four (24) hours of such notice and jointly examine each other's Network, network facilities, network services or Equipment to locate the source of the interference.

[**Note:** Subsections 5.16.6 to 5.16.9 which are specific to O&T Services have been moved to the Service Specific Obligations in subsection 6.1. See section 32 of the PI Paper for further information.]

5.16.17 TERM, SUSPENSION AND TERMINATION OBLIGATIONS

5.16.15.17.1 Term: An Operator shall, unless otherwise required by the Access Seeker, enter into Access Agreements with a term of no less than three (3) years from the date of execution of the Access Agreement.

5.16.25.17.2 Term of supply: Unless otherwise agreed in an Access Agreement, and subject to the Access Provider not being able to provide access as a result of Force Majeure, ~~thean~~ Access Provider shall only require ~~thean~~ Access Seeker to acquire access to individual Facilities and Services under ~~thean~~ Access Agreement for a minimum period as follows:

Facilities / Services	Minimum term
Access Services (e.g. originating and terminating access)	No minimum term
Transmission services	12 months
Network facilities access	3 years

5.16.35.17.3 Termination circumstances: Subject to ~~paragraph subsection~~ 5.17.6, an Access Provider may only terminate an Access Agreement if any of the circumstances referred to in paragraphs 5.17.3(a), 5.17.3(b) or 5.17.3(c) apply and the Access Provider has notified the Access Seeker that it will terminate where:

- (a) the Access Seeker has materially breached the agreement, ~~and~~ the Access Provider has notified the Access Seeker that it will terminate in no less than thirty (30) days if the Access Seeker has not remedied its

breach by the end of that period and the Access Seeker has failed to remedy its breach in accordance with such a notification; or

- (b) the Access Seeker has become subject to a winding up ~~o~~Order; or
- (c) a Force Majeure has continued for a period of more than 90 days.

The Access Provider shall forward to the Commission a copy of the notice of termination at the same time as providing the notice of termination to the Access Seeker.

5.16.45.17.4 Change in law: Where continued operation of ~~the~~an Access Agreement or access to any Network, Facilities or Services provided under it is or will be unlawful (as a result of a legislative change), the Access Seeker and the Access Provider must meet within five (5) Business Days of becoming aware of the Relevant Change in law to review whether access to the relevant Network, Facilities or Services may be provided by the Access Provider on different terms and conditions (which are acceptable to the Access Seeker). If the Parties cannot agree to the provision of access on different terms and conditions, the Access Provider may terminate the provision of access to the relevant Network, Facilities or Services.

5.16.55.17.5 Suspension: Subject to ~~paragraph~~subsection 5.17.6, an Access Provider may only suspend access to any Facilities or Services in the following circumstances:

- (a) the Access Seeker's Facilities materially and adversely affect the normal operation of the Access Provider's Network, or are a material threat to any person's safety;
- (b) the Access Seeker's Facilities or the supply of Services pose an imminent threat to life or property of the Access Provider, its employees or contractors;
- (c) the Access Seeker's Facilities cause material, physical or technical harm to any Facilities of the Access Provider or any other person;
- (d) where the Access Seeker has failed to pay Invoices in accordance with subsection 5.14 (and subject to any right the Access Seeker has under subsection 5.14 to dispute any amount in an Invoice);

(e) where the Access Seeker has failed to provide the new security amount as required under subsections 5.3.9, 5.19.7 and 5.19.8;

~~(e)~~(f) where Force Majeure applies; or

~~(f)~~(g) the Access Seeker breaches any laws, regulations, rules or standards which has a material and adverse effect on the Access Provider or the provision by the Access Provider of Facilities and/or Services under this Agreement.

For the purposes of this subsection 5.17.5, an Access Provider must provide the Access Seeker five (5) Business Days' Notice in writing, including written reasons, prior to suspending access to any Facilities or Services.

5.17.6 NoticeApproval: Prior to terminating, ~~or~~ suspending, or seeking to materially vary an Access Agreement or access to any Facilities or Services provided under it, an Access Provider must ~~notify~~inform the Commission in writing of the action the Access Provider proposes to take and the reasons why it considers such action is appropriate. The Commission may invite any affected Access Seeker to make submissions to the Commission regarding the proposed termination, suspension or material variation. The Access Provider:

(a) shall only give effect to the proposed termination, suspension or material variation not terminate or suspend or seek to materially vary the Access Agreement or access to any Facilities or Services provided under it until such subject to any time delay, and on such or conditions, as which the Commission may specify (if any); and

~~(g)~~(b) shall take all steps practicable to minimise disruptions and inconvenience to the Customers of the Access Seeker, including providing the Access Seeker with a reasonable period to make alternative arrangements prior to the suspension or termination of the Access Agreement, or access to Facilities or Services provided under it.

~~5.16.6~~**5.17.7 Undertakings:** If the parties to an Access Agreement adopt the terms and conditions specified in an undertaking that has been registered with the Commission in accordance with the Act, the parties must notify the Commission within five (5) Business Days of such adoption. In such circumstances, the terms and conditions of the Access Agreement will continue in force for the

remainder of the term of that Access Agreement, even if the access undertaking is withdrawn or expires prior to the expiry of that term.

~~5.16.75.17.8~~ **Post-termination fees:** An Access Provider shall not recover any additional charges, costs or expenses on termination or suspension of an Access Agreement or access to any Facilities or Services provided under it except:

- (a) charges invoiced in arrears and not yet paid; or
- (b) charges arising during an applicable minimum contractual period (as described in subsection 5.17.2) provided that:
 - i. such charges must be reduced to reflect any cost savings to the Access Provider from not having to supply the Facilities or Services to the extent that they have been terminated or suspended; and
 - ii. the Access Provider must use reasonable endeavours to mitigate its costs of termination or suspension and maximise cost savings under paragraph 5.17.8(b)i.

~~5.16.85.17.9~~ **Upfront charges refund:** On termination of an Access Agreement or access to any Facilities or Services provided under it, the Access Provider shall refund to the Access Seeker all amounts paid in advance to the extent that the amount (or part of the amount calculated on a pro-rata basis) relate to the period after the date of effect of such termination.

~~5.16.95.17.10~~ **Deposits and guarantees:** Notwithstanding the obligation in subsection 5.17.9, the Access Provider shall:

- (a) within sixty (60) days of termination of the Access Agreement refund to the Access Seeker any deposit paid provided all other amounts payable by the Access Seeker to the Access Provider have been paid; and
- (b) immediately upon termination of the Access Agreement unconditionally waive any rights under any guarantees provided by the Access Seeker except in respect of amounts payable by the Access Seeker to the Access Provider as at the date of termination.

5.175.18 CHURN OBLIGATIONS

5.17.15.18.1 **Authorisation of Releasing Service Provider:** The Releasing Service Provider must not object to the Access Service Provider implementing any Customer's Churn request, where such request is received by the Access Service Provider from a Gaining Service Provider.

5.17.25.18.2 **Notifications:** Except where the Releasing Service Provider and the Access Service Provider are the same person, the Gaining Service Provider must notify the Releasing Service Provider of each proposed Churn prior to forwarding a Transfer Request to the Access Service Provider

5.17.35.18.3 **Notification of invalid Churns:** Within two (2) Business Days of the receipt by the Releasing Service Provider of the notice from the Gaining Service Provider under subsection 5.18.2, the Releasing Service Provider must advise the Gaining Service Provider if it believes, on reasonable grounds, that the Transfer Request is invalid because:

- (a) the Transfer Request resulted from a processing error; or
- (b) the Transfer Request was incomplete (for reasons including that the Customer or their agent did not execute the Transfer Form).

For clarification, if no notice is provided under this subsection, the Gaining Service Provider may forward the Transfer Request to the Access Service Provider where it is a different person to the Releasing Service Provider.

5.17.45.18.4 **Response to invalid Churn notification:** If a notification is made under subsection 5.18.3, the Releasing Service Provider must provide the Gaining Service Provider with evidence upon which the notification is based. In such circumstances, the Releasing Service Provider and the Gaining Service Provider must take immediate action to rectify the invalid Churn in accordance with the Customer's wishes. If the Customer wishes to proceed with the transfer to the Gaining Service Provider, and the Gaining Service Provider provides the Releasing Service Provider with a Transfer Form, the Transfer Request may be provided to the Access Service Provider immediately.

5.17.55.18.5 **Implementation of Churn:** Within two (2) Business Days after the receipt of a Transfer Request, the Access Service Provider must implement the Churn and advise each of the Gaining Service Provider and the Releasing Service Provider that the transfer has been completed.

~~5.17.65.18.6~~ **Facilitation of Churn:** An Access Service Provider must facilitate and implement Churns between Operators in accordance with the obligations specified in subsection 5.18.5, even if the Access Service Provider is not the Releasing Service Provider or the Gaining Service Provider.

~~5.17.75.18.7~~ **Confidentiality:** Unless otherwise specifically provided in this Standard, the Access Service Provider and the Releasing Service Provider must not use information disclosed for the purposes of a Churn (including information contained in a Transfer Request or a Transfer Form) for other purposes. In particular, the Access Service Provider and the Releasing Service Provider must handle information disclosed for the purposes of a Churn as ~~confidential~~Confidential Information of the Gaining Service Provider, and must not use such information in connection with marketing to, or offering services to a Customer.

~~5.17.85.18.8~~ **Availability:** If a Service is subject to a Churn, a Releasing Service Provider or an Access Service Provider (acting as an Access Provider for the purposes of the Standard) must not refuse an Access Request (under subsection 5.4.10 of the Standard) on the ground that the Releasing Service Provider is currently using the Service specified in the Access Request.

~~5.18.5.19~~ **LEGAL BOILERPLATE OBLIGATIONS**

~~5.18.15.19.1~~ **Obligation to supply:** Each Operator shall have an absolute obligation to supply access to ~~the~~ Facilities ~~or and~~ Services in accordance with this Standard. Such obligation shall not be conditional upon the use of that Operator's reasonable or best endeavours. Each Operator shall ensure that it shall not enter into any arrangement which will prevent, hinder or restrict the fulfilment of the Operator's obligation under this Standard.

~~5.18.25.19.2~~ **Mutual compensation:** ~~An~~ Each Operator must establish mutually acceptable compensation arrangements with ~~the~~ each other Operator (including bill-and-keep arrangements).

~~5.18.35.19.3~~ **Interconnect Steering Group:** Each Operator must appoint a representative or representatives to an Interconnect Steering Group (and such other working groups as may be agreed upon) to manage the smooth and timely implementation of the terms and conditions of Access Agreements.

~~5.18.45.19.4~~ **Dispute Resolution:** ~~An~~ Each Operator must comply with the Dispute Resolution Procedures.

~~5.18.55.19.5~~ **Complete charges:** Each Operator shall specify all charges in an Access Agreement and shall not attempt to recover any other costs, expenses or charges which are not specified in the Access Agreement except where such work is to be done on a time and materials basis in which case the Access Provider shall do such work in accordance with a quotation agreed with the Access Seeker as set out in the Standard.

~~5.18.65.19.6~~ **Intellectual Property:** Each Operator shall licence to ~~the each~~ other Operator under an Access Agreement on a royalty-free basis, all Intellectual Property rights necessary for the ongoing operation of the Access Agreement and the inter-operability of the Operators' Networks, subject to any relevant third party licences. The term of the licence must be consistent with the term of the relevant Access Agreement.

~~5.18.75.19.7~~ **Security review:** ~~An Operator may only review the security provided to it by another Operator in accordance with subsection 5.3.8 during the term of an Access Agreement if there has been a material change in circumstances in relation to the other Operator's creditworthiness. For clarification, a material change in circumstances includes, but is not limited to, failure to pay on the due date specified in at least three (3) Invoices rendered in the preceding six (6) months, so long as those amounts have not been disputed in good faith. An Operator shall only vary the amount and type of any security requirements imposed on another Operator:~~

~~(a) a maximum of once in any twelve (12) month period;~~

~~(b) if there is a material increase in the credit risk to the Operator due to changes in either or both of the circumstances under paragraphs 5.3.9(b)i and 5.3.9(b)ii; and~~

~~(c) if the Operator determines, acting reasonably, that the variation will materially reduce or remove the increased credit risk.~~

If amounts contained in Invoices are disputed in good faith, this will not constitute a material ~~change in circumstances~~ increase in the credit risk to the Operator for the purposes of paragraph 5.19.7(b).

~~5.18.85.19.8~~ **Additional security:** For the purposes of ~~ff~~ subsection 5.19.7 ~~applies~~, an Operator may only request additional or substitute security from another Operator in a manner consistent with that which would apply if the other Operator was making a new Access Request under subsection 5.3.

5.18.95.19.9 Assignment: An Operator's right to assign its rights under an Access Agreement prepared by it shall be reciprocal with the other Operator's rights of assignment.

5.18.105.19.10 Review: An Operator shall specify in an Access Agreement prepared by it that such Access Agreement shall be reviewed:

- (a) if the Minister issues a direction or determination relating to its subject matter;
- (b) if the Commission issues a direction or determination relating to its subject matter;
- (c) if the Act or this Standard is amended in relation to its subject matter;
- (d) by agreement of each of the parties; or
- (e) if a condition of the Operator's licence is amended or deleted or a new condition is imposed in relation to its subject matter.

5.18.115.19.11 Costs and expenses: Each Operator shall bear its own costs and expenses in relation to the preparation, negotiation and execution of an Access Agreement to which they are parties.

5.18.125.19.12 Applicable laws: An Operator shall include a provision in all Access Agreements prepared by it which provides that the Agreement will be governed by the laws of Malaysia and that Operator will comply with all applicable directions issued by the Malaysian regulatory authorities.

5.19.13 Reciprocity: An Access Provider must offer to acquire access to Facilities and Services on the same terms that it provides access to those Facilities and Services.

5.19.14 Conditional supply: An Access Provider shall not require an Access Seeker to acquire:

- (a) other facilities or services from the Access Provider as a condition of providing access to Facilities or Services under this Standard (for example, an Access Provider shall not make access to Facilities conditional on the acquisition of Services, such as Transmission Services, or other services, such as maintenance services); and

(b) any Facilities or Services in any minimum or maximum quantity.

5.195.20 [INTER-OPERATOR MOBILE NUMBER PORTABILITY (MNP) SUPPORT SERVICES]

[Note: Subsection 5.20 (Inter-operator Mobile Number Portability (MNP) Support Services) was deleted in accordance with section 3(s) of the Variation to Commission Determination on the Mandatory Standard on Access (Determination No. 2 of 2005), Determination No. 2 of 2009.]

5.205.21 [DOMESTIC CONNECTIVITY TO INTERNATIONAL SERVICES]

[Note: Subsection 5.21 (Domestic Connectivity to International Services) has been relocated to the Service Specific Obligations under subsection 6.10.]

5.215.22 [INTERNET INTERCONNECTION SERVICES]

[Note: Subsection 5.22 (Internet Interconnection Services) is deleted as this service was removed from the Access List. See the PI Paper at section 31.4 for further information.]

5.225.23 [DIGITAL TERRESTRIAL BROADCASTING (DTB) MULTIPLEXING SERVICE]

[Note: Subsection 5.23 (Digital Terrestrial Broadcasting (DTB) Multiplexing Service) has been relocated to the Service Specific Obligations under subsection 6.12.]

5.235.24 [ACCESS TO NETWORK ELEMENTS]

[Note: Subsection 5.24 (Access to Network Elements) has been relocated to the Service Specific Obligations under subsection 6.4.]

5.245.25 [WHOLESALE LINE RENTAL SERVICE]

[Note: Subsection 5.25 (Wholesale Line Rental Service) has been relocated to the Service Specific Obligations under subsection 6.2.]

5.255.26 [HSBB NETWORK SERVICES]

[Note: Subsection 5.26 (HSBB Network Services) has been relocated to the Service Specific Obligations under subsection 6.6.]

SECTION 6: SERVICE SPECIFIC OBLIGATIONS

6.1 O&T SERVICES

6.1.1 Application: This subsection 6.1 applies where access to an O&T Service has been requested or is to be provided.

6.1.2 Forecasts: For the purposes of subsection 5.6.6, an Access Provider shall only request Forecasts where:

- (a) the maximum period of time covered by Forecasts regarding O&T Services is one (1) year;
- (b) the minimum intervals or units of time to be used in Forecasts regarding O&T Services is six (6) months; and
- (c) the maximum frequency to update or to make further Forecasts regarding O&T Services is once every six (6) months.

6.1.3 Acknowledgement of receipt: For the purposes of subsection 5.7.5, an Access Provider shall acknowledge receipt of each Order for an O&T Service within one (1) Business Day.

6.1.4 Time for acceptance or rejection: Subject to any shorter timeframe required under subsection 5.7.12, an Access Provider must notify an Access Seeker that an Order for an O&T Service is accepted or rejected within ten (10) Business Days after:

- (a) receiving the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8; or
- (b) providing the Access Seeker with post-Order Service Qualification information under subsection 5.7.9, where the Access Provider did undertake post-Order Service Qualification for that Order under subsection 5.7.8.

5.25-16.1.5 Indicative delivery timeframe: For the purposes of paragraph 5.7.13(a)i, the indicative delivery timeframe for O&T Services is twenty (20) Business Days.

5.25.26.1.6 Billing Cycle: For the purposes of subsection 5.14.3, between the Operators, the Billing Cycle for O&T Services will be monthly.

5.25.36.1.7 Non-discrimination: An Access Provider shall perform Network Conditioning on an equivalent basis to that which the Access Provider performs Network Conditioning for itself for the same or similar type of O&T Services.

5.25.46.1.8 Impact of retail commercial arrangements: An Access Provider must not refuse to commence or complete Network Conditioning on the basis that the commercial arrangements (other than arrangements in relation to matters which required specified under subsection 6.1.9 of this Standard to perform Network Conditioning, to the extent relevant) are not agreed between the parties in relation to the retail service for which the Network Conditioning is to be provided.

5.25.56.1.9 Commencement of Network Conditioning: An Access Provider must commence Network Conditioning for a Facility or Service which requires the Access Provider to conduct such Network Conditioning immediately following receipt of an Order from an Access Seeker and agreement by the Access Provider and the Access Seeker in relation to the following matters, to the extent relevant:

- (a) geographical coverage;
- (b) number information (i.e. length and code allocation);
- (c) origins from or destinations to which access is required;
- (d) Network routes (including which Operator is responsible for the provisioning of the Interconnection Links); and
- (e) handover arrangements and relevant Points of Interface.

5.25.66.1.10 Number range activation: Subject to subsection 6.1.11, if the supply of a Facility or Service requires the Access Provider to activate a code or number range on its Network, the Access Provider shall:

- (a) use its best endeavours to activate in the Access Provider's Network the a code or number range within the shorter of the timeframe that the Access Provider would activate the code or number range for itself and

ten (10) Business Days of being requested to do so by the Access Seeker; and

- (b) in all cases, activate thea code or number range within thirty (30) days of being requested to do so by the Access Seeker.

~~5.25.76.1.11~~ **Intra-Network codes and numbers:** Subsection 6.1.10 does not apply to codes or number ranges not intended for use across interconnected Networks.

~~5.25.86.1.12~~ **Costs:** The costs incurred in Network Conditioning shall be apportioned between the Operators as follows:

- (a) if the work has been carried out in accordance with a Government or Commission requirement, the Operators will bear their own costs; and
- (b) if the work has been carried out to fulfil an Order made in accordance with this Standard, the costs shall be apportioned in an equitable manner between the Operators having regards to cost causation.

6.1.13 Handover principles: Where access is provided to an O&T Service, an Operator shall handover interconnected calls to the other Operator on the basis requested by the Access Seeker, unless otherwise agreed in an Access Agreement. For clarification;

- (a) for originating Services provided by an Access Provider, the terminating Operator (as Access Seeker) may elect whether handover will be on a Near End Handover basis or on a Far End Handover basis; and
- (b) ~~f~~For terminating Services provided by an Access Provider, the originating Operator (as Access Seeker) may elect whether handover will be on a Near End Handover or on a Far End Handover basis.

~~5.25.96.1.14~~ **CLI:** For the purpose of billing reconciliation and call charge verification, Operators will provide CLI to each other subject to CLI being forwarded to it from another Network with which its Network is interconnected.

~~5.25.106.1.15~~ **Dummy CLIs:** An Operator must route a Customer's original CLI and must not translate numbers, use dummy numbers or dummy CLI, or use any means to alter numbers which may confuse or have the tendency to confuse the other Operator's Network (including transit Networks) or billing systems.

Where technical problems for routing or billing so demand, then the use of dummy numbers shall only be permitted as ~~is~~ agreed between the Operators.

5.25.116.1.16 Quality of service: An Access Provider shall provide access to O&T Services for Access Seekers in accordance with the quality of service parameters set out in the table below, as follows and otherwise on an equivalent basis as it provides for itself:

Network Quality %	Threshold %	Remarks
1.0 Successful Call 1.1 Answered Call 1.2 Busy Call 1.3 No Answer Call 1.4. Call Abandon	≥ 94%	Number of calls that successfully seized a trunk group and are answered. Number of calls that successfully seized a trunk group and are terminated after connection due to “terminating subscriber is busy”. Number of calls that successfully seized a trunk group and are rejected because either the called device did not answer or the calling pParty went on-hook during ringing. Indicates the unallocated numbers and incomplete dialling from calling pParty.
Call Establishment Rate (1.1 + 1.2 + 1.3)	≥ 85%	Expressed as the sum of Answered, Busy and No Answer Calls s and that indicates <u>the proportion of calls</u> are that <u>successfully seized</u> the circuits to <u>out of</u> the total of call attempts.
2.0 Unsuccessful Call 2.1 Network Congestion Internal Congestion (ICONG)	≤ 6% ≤ 3% ≤ 1%	Number of calls offered to a trunk group that successfully overflowed or are rejected in their own switch. -(Internal congestion of originating POI and interconnect route congestion that—is due to insufficient capacity to support the current traffic). SMS <u>is</u> to be agreed with Access Seekers in accordance with best practice.
External Congestion (OCONG)	≤ 2%	Number of calls that, after a trunk group is seized, are rejected upon receiving a backward signal indicating <u>that</u> far end congestion <u>has</u> occurred within the terminating POI and the subsequent

<p>2.2 Network Fault</p>	<p>≤ 3%</p>	<p>terminating Network. SMS <u>is</u> to be agreed with Access Seekers in accordance with best practice.</p>
<p>External Technical Irregularities/Error (ETI)</p>	<p>≤ 2%</p>	<p>Calls which<u>that</u> are<u>being</u> successfully connected through the Network are rejected upon detection of technical irregularities or faults in the far end radio subsystem in the other Network Element.</p>
<p>Internal Technical Irregularities/Error (ITI)</p>	<p>≤ 1%</p>	<p>Calls which<u>that</u> are<u>being</u> successfully connected through the Network are rejected upon detection of technical irregularities in the originating Network.</p>

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5.266.2 **WHOLESALE LINE RENTAL SERVICE**

5.26.16.2.1 **Application:** This subsection 6.2 ~~only~~ applies where access to the an Access Provider which provides or is required to provide a Wholesale Line Rental Service has been requested or is to be provided.

6.2.2 **Forecasts:** For the purposes of subsection 5.6.6, an Access Provider shall only request Forecasts where:

- (a) the maximum period of time covered by Forecasts regarding Wholesale Line Rental Service is three (3) months;
- (b) the minimum intervals or units of time to be used in Forecasts regarding Wholesale Line Rental Service is one (1) month; and
- (c) the maximum frequency to update or to make further Forecasts regarding Wholesale Line Rental Service is once a month.

6.2.3 **Acknowledgement of receipt:** For the purposes of subsection 5.7.5, an Access Provider shall acknowledge receipt of each Order for a Wholesale Line Rental Service within one (1) Business Day.

6.2.4 **Time for acceptance or rejection:** Subject to any shorter timeframe required under subsection 5.7.12, an Access Provider must notify an Access Seeker that an Order for a Wholesale Line Rental Service is accepted or rejected within one (1) Business Day after:

- (a) receiving the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8;
or
- (b) providing the Access Seeker with post-Order Service Qualification information under subsection 5.7.9, where the Access Provider did undertake post-Order Service Qualification for that Order under subsection 5.7.8.

6.2.5 **Indicative delivery timeframe:** For the purposes of paragraph 5.7.13(a)i, the indicative delivery timeframe for Wholesale Line Rental Service is five (5) Business Days.

6.2.6 Billing Cycle: For the purposes of subsection 5.14.3, between the Operators, the Billing Cycle for Wholesale Line Rental Service will be monthly.

5.26.26.2.7 **Sole relationship with Customer:** The Access Seeker has the sole relationship with the Customer when providing a service to the Customer which uses the Wholesale Line Rental as an input to that service provision.

5.26.36.2.8 **Prohibited use of Customer information:** The Access Provider is expressly prohibited from using any Access Seeker's Customer information to market or offer to supply its goods or services to that or any other Customer, except where:

- (a) information on the Customer is publicly available; or
- (b) information on the Customer has been received or developed by the Access Provider from sources other than the Access Seeker.

and, in either case, the information has not been collected or generated with reference to, or combined with or compared to, information provided in connection with the Access Provider's supply of the Wholesale Line Rental Service. This includes any use or intended use by the Access Provider to persuade-dissuade that Customer from entering into a contractual relationship with the Access Seeker for retail services that use the Wholesale Line Rental Service as an input or more generally, or to persuade that Customer to enter into a contractual relationship with the Access Provider for the Access Provider's retail services.

5.276.3 **INTERCONNECT LINK SERVICE**

6.3.1 **Application:** This subsection 6.3 applies where access to the Interconnect Link Service has been requested or is to be provided.

6.3.2 **Forecasts:** For the purposes of subsection 5.6.6, an Access Provider shall only request Forecasts where:

(a) the maximum period of time covered by Forecasts regarding Interconnect Link Service is three (3) years;

(b) the minimum intervals or units of time to be used in Forecasts regarding Interconnect Link Service is one (1) year; and

(c) the maximum frequency to update or to make further Forecasts regarding Interconnect Link Service is once a year.

6.3.3 **Acknowledgement of receipt:** For the purposes of subsection 5.7.5, an Access Provider shall acknowledge receipt of each Order for an Interconnect Link Service within two (2) Business Days.

6.3.4 **Time for acceptance or rejection:** Subject to any shorter timeframe required under subsection 5.7.12, an Access Provider must notify an Access Seeker that an Order for an Interconnect Link Service is accepted or rejected within fifteen (15) Business Days after:

(a) receiving the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8; or

(b) providing the Access Seeker with post-Order Service Qualification information under subsection 5.7.9, where the Access Provider did undertake post-Order Service Qualification for that Order under subsection 5.7.8.

6.3.5 **Indicative delivery timeframe:** For the purposes of paragraph 5.7.13(a)i, the indicative delivery timeframe for Interconnect Link Service is twenty (20) Business Days.

5.27.16.3.6 **Billing cycle:** For the purposes of subsection 5.14.3, between the Operators, the Billing Cycle for Interconnect Link Service will be monthly.

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5.286.4 ACCESS TO NETWORK ELEMENTS

5.28.16.4.1 **Application:** This subsection 6.4 applies where Access to Network Elements has been requested or is to be provided.

5.28.26.4.2 **Seven access elements:** The elements to which access is required to be provided are as follows:

- (a) access to the copper elements of the access network, being:
 - i. the Full Access Service;
 - ii. the Line Sharing Service;
 - iii. the Bitstream Service ~~(with or without Network Service;)~~
 - iii-iv. the Bitstream without Network Service; and
 - iv-v. the Sub-Loop Service;
- (b) access to associated optical fibre services in the Full Access Service, the Line Sharing Service and the Sub-Loop Service;
- (c) access to co-location services in accordance with the description of Network Co-location Service under subsection 5.13 and associated tie cable services;
- (d) access to transmission services in accordance with the descriptions of ~~Domestic Network~~ Transmission Services (though such access shall not be a condition to the supply of ANE);
- (e) access to shared splitting services;
- (f) access to interfaces to Operational Support Systems in accordance with subsection 6.4.9; and
- (g) access to network information in accordance with subsection 6.4.3.

5.28.36.4.3 **Access to network information:** At an Access Seeker's request, subject to the Access Provider's confidentiality obligations in respect of the information, an Access Provider must provide the Access Seeker with the

equivalent following network information ~~to that Access Seeker~~ as it gives to itself including (but not limited to) the following types of information:

(a) ~~The~~ basic information on the cabling system, which includes but is not limited to the following:

- i. a list and/or map of MDFs including total number of usable loops and number of loops in use;
- ii. data on known disturbers per MDF and per cable;
- iii. line distribution per MDF (weighted average distribution);
- iv. general information concerning cable characteristics including typical type and quality of cable (e.g. diameter, results from quality tests that have been conducted, number of lines, technical interference control and spectral management plan);
- v. statistical information about the network e.g. loop characteristics;
- vi. standard spectrum masks and/or list of approved systems;
- vii. availability of co-location space and type;
- viii. availability of power;
- ix. availability of space at MDF;
- x. co-location environmental services (such as air conditioning, uninterruptible power supply, security);

(b) ~~the~~ detailed information on the cabling system, which includes but is not limited to the following:

- i. the latest update of information in addition to line distribution per MDF, described in paragraph 6.4.3(a)iii, where the Access Seeker wants to have access;

- ii. location (physical address information) associated with the MDFs and the name of the associated local switch and/or number ranges associated with MDFs;
- iii. exact customer coverage of each MDF;
- iv. detailed information concerning loop characteristics, any known limitations or incompatibilities;
- v. results of any DSL tests;
- vi. any foreseeable limitations of space for MDF extensions;
- vii. detailed description of procedures and conditions relating to requested form of ANE;

~~(e)~~ (c) ~~the~~ detailed information on access to MDFs, which includes, but is not limited to the :

- i. type of access proposed by Access Provider, either being one of:
 - (A) directly on the MDF; ~~or~~
 - (B) in-house on HDF (distance, cable type and size (number of pairs)); ~~or~~
 - (C) outside (remote) on HDF (distance, cable type and size (number of pairs)); or
 - (D) cable entry points and capacity available; and

(d) the detailed information on co-location, which includes but is not limited to:

- i. availability of co-location space and type, detailed floor plan, if space is required by the Access Seeker;
- ii. co-location environmental services (such as air conditioning, uninterruptible power supply, security), technical constraints (if any), terms and conditions of use; and

- iii. conditions of physical access to the facilities.

6.4.4 **Forecasts:** For the purposes of subsection 5.6.6, an Access Provider shall only request Forecasts where:

- (a) the maximum period of time covered by Forecasts regarding Access to Network Elements is three (3) months;
- (b) the minimum intervals or units of time to be used in Forecasts regarding Access to Network Elements is one (1) month; and
- (c) the maximum frequency to update or to make further Forecasts regarding Access to Network Elements is once a month.

6.4.5 **Acknowledgement of receipt:** For the purposes of subsection 5.7.5, an Access Provider shall acknowledge receipt of each Order for Access to Network Elements within one (1) Business Day.

6.4.6 **Grounds for refusal:** In addition to the grounds of refusal in subsection 5.4.11, an Access Provider may refuse an Access Request, or an Order, for access to ANE in respect of specific premises if the Access Provider provides evidence that those premises are actively connected to and retail services are being provided using a HSBG Network Service. For the sake of clarity, subsection 5.4.19 applies to any refusal under this subsection.

6.4.7 **Time for acceptance or rejection:** Subject to any shorter timeframe required under subsection 5.7.12, an Access Provider must notify an Access Seeker that an Order for Access to Network Elements is accepted or rejected within one (1) Business Day after:

- (a) receiving the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8;
or
- (d)(b) providing the Access Seeker with post-Order Service Qualification information under subsection 5.7.9, where the Access Provider did undertake post-Order Service Qualification for that Order under subsection 5.7.8.

5.28.46.4.8 **Billing Cycle:** For the purposes of subsection 5.14.3, between the Operators, the Billing Cycle for Access to Network Elements will be monthly.

~~5.28.56.4.9~~ **Interface to Operational Support System (OSS):** The Access Provider shall make available, for all Access Seekers, access to its OSS for ordering, maintenance, ~~and fault reporting/repair~~ and billing purposes. on an equivalent basis as it provides itself, including through an electronic interface between the Access Provider's and the Access Seeker's systems which may be developed jointly by the Access Provider and the Access Seeker or as otherwise agreed between the parties. ~~Ordering and provisioning procedures should follow the general principles of transparency and non-discrimination. An electronic interface should be installed for submission and processing of the ANE Orders as far as this serves to increase efficiency. This interface could also be used for fault reports. The development of electronic interface may be undertaken jointly by the Access Provider and the Access Seeker. Access to the Access Provider's OSS should be granted to all Access Seekers on equitable and non-discriminatory terms.~~ For the purposes of this subsection 6.4.9~~In order to allow access,~~ the Access Provider ~~must~~will provide the Access Seeker with the necessary technical specifications for the development and use of concerning ~~the~~ electronic interface between its own and the Access Seeker's systems.

~~5.28.66.4.10~~ **Indicative Aactivation timeframes:** For the purposes of paragraph 5.7.13(a)i, ~~An Access Provider shall comply with respect the following activation timelines for access to each of the Services/elements described in paragraph/subsection 6.4.2(a),~~ the indicative activation timeframes are as follows:

Full Access Service	<u>Within two (2) Business Days of the Notice of Acceptance or confirmation of the Order (if applicable) from receipt of a request and all relevant supporting documentation</u>
Line Sharing Service	<u>Within two (2) Business Days of the Notice of Acceptance or confirmation of the Order (if applicable) from receipt of a request and all relevant supporting documentation</u>
Bitstream Service (with Network Service)	<u>Within five (5) Business Days of the Notice of Acceptance or confirmation of the Order (if applicable) from receipt of a request and all relevant supporting documentation</u>

Bitstream Service (without Network Service)	<u>Within five (5) Business Days of the Notice of Acceptance or confirmation of the Order (if applicable) from receipt of a request and all relevant supporting documentation</u>
Sub-Loop Service	<u>Within two (2) Business Days of the Notice of Acceptance or confirmation of the Order (if applicable) from receipt of a request and all relevant supporting documentation</u>

5.28.76.4.11 Retail line rental services: The Access Provider shall not require an end user to acquire a retail line rental service if the Access Seeker is acquiring the Wholesale Line Rental Service, Full Access Service, Bitstream ~~Services~~ (with ~~and without~~ Network Service), Bitstream without Network Service or Sub-loop Service.

5.28.86.4.12 Implementation and Migration Plan: For the sake of clarity, subsection 6.6.9 shall apply in relation to an Access Seeker who:

- (a) has entered into an Access Agreement with an Access Provider for the provision of Full Access Service, Line Sharing Service, Bitstream with Network Service, Bitstream without Network Service and/or Sub-loop Service ~~and/or Bitstream Services (with and without Network Service)~~; and
- (b) is acquiring the Facilities and/or Services specified in paragraph 6.4.12(a) at premises that will be served by a HSBB Network Service ~~(with or without QoS)~~ within five (5) years or less.

6.5 DIGITAL SUBSCRIBER LINE RESALE SERVICE

6.5.1 Application: This subsection 6.5 applies where access to the Digital Subscriber Line Resale Service has been requested or is to be provided.

6.5.2 Forecasts: For the purposes of subsection 5.6.6, an Access Provider shall only request Forecasts where:

- (a) the maximum period of time covered by Forecasts regarding Digital Subscriber Line Resale Service is three (3) months;
- (b) the minimum intervals or units of time to be used in Forecasts regarding Digital Subscriber Line Resale Service is one (1) month; and
- (c) the maximum frequency to update or to make further Forecasts regarding Digital Subscriber Line Resale Service is once a month.

6.5.3 Grounds of refusal: In addition to the grounds of refusal in subsection 5.4.11, an Access Provider may refuse an Access Request, or an Order, for the Digital Subscriber Line Resale Service in respect of specific premises if the Access Provider provides evidence that those premises are actively connected to and retail services are being provided using a HSBB Network Service. For the sake of clarity, subsection 5.4.19 applies to any refusal under this subsection.

6.5.4 Acknowledgement of receipt: For the purposes of subsection 5.7.5, an Access Provider shall acknowledge receipt of each Order for a Digital Subscriber Line Resale Service within one (1) Business Day.

6.5.5 Time for acceptance or rejection: Subject to any shorter timeframe required under subsection 5.7.12, an Access Provider must notify an Access Seeker that an Order for a Digital Subscriber Line Resale Service is accepted or rejected within one (1) Business Day after:

- (a) receiving the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8; or
- (b) providing the Access Seeker with any post-Order Service Qualification information under subsection 5.7.9, where the Access Provider did undertake post-Order Service Qualification for that Order under subsection 5.7.8.

6.5.6 Indicative activation timeframe: For the purposes of paragraph 5.7.13(a), the indicative activation timeframe for Digital Subscriber Line Resale Service is ten (10) Business Days.

[Note: MCMC is considering whether a shorter activation timeframe for the Digital Subscriber Line Resale Service should be required for a Digital Subscriber Line Resale Service. See the PI Paper at section 36]

5.28.96.5.7 Billing Cycle: For the purposes of subsection 5.14.3, between the Operators, the Billing Cycle for Digital Subscriber Line Resale Service will be monthly.

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5.296.6 HSBB NETWORK SERVICES

~~5.29.16.6.1~~ **Application:** This subsection ~~6.6~~~~only applies to an Access Provider which provides or is required to provide and an Access Seeker acquiring and/or seeking to acquire where access has been requested or is to be provided to~~ HSBB Network Services.

- ~~(a) HSBB Network Services;~~
- ~~(b) Bitstream Services (with and without Network Service);~~
- ~~(c) Digital Subscriber Line Resale Service;~~
- ~~(d) Full Access Service;~~
- ~~(e) Line Sharing Service; and/or~~
- ~~(f) Sub-loop Service.~~

~~5.29.26.6.2~~ **Forms of HSBB Network Services:** There are 2 forms of HSBB Network Services:

- (a) Layer 2 HSBB Network Services with QoS; and
- (b) Layer 3 HSBB Network Service~~HSBB Network Service without QoS.~~

~~6.6.3~~ **Forecasts:** For the purposes of subsection ~~5.6.6~~, an Access Provider shall only request Forecasts where:

- ~~(a) the maximum period of time covered by Forecasts regarding HSBB Network Services is three (3) months;~~
- ~~(b) the minimum intervals or units of time to be used in Forecasts regarding HSBB Network Services is one (1) month; and~~
- ~~(c) the maximum frequency to update or to make further Forecasts regarding HSBB Network Services is once a month.~~

~~6.6.4~~ **Acknowledgement of receipt:** For the purposes of subsection ~~5.7.5~~, an Access Provider shall acknowledge receipt of each Order for an HSBB Network Service within:

(a) one (1) hour within a Business Day; and

(b) one (1) hour of the start of the next Business Day, if the Order is received after the end of a Business Day and before the start of the next Business Day.

6.6.5 Time for acceptance or rejection: Subject to any shorter timeframe required under subsection 5.7.12, an Access Provider must notify an Access Seeker that an Order for a HSBB Network Service is accepted or rejected within one (1) Business Day after:

(a) receiving the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8; or

(b) providing the Access Seeker with post-Order Service Qualification information under subsection 5.7.9, where the Access Provider did undertake post-Order Service Qualification for that Order under subsection 5.7.8.

6.6.6 Indicative activation timeframes: For the purposes of paragraph 5.7.13(a)i, the indicative activation timeframe for HSBB Network Services is:

(a) in respect of a premises already connected to the HSBB Network, three (3) Business Days; and

(b) in respect of a premises not already connected to the HSBB Network, up to twenty (20) Business Days.

6.6.7 Billing Cycle: For the purposes of subsection 5.14.3, between the Operators, the Billing Cycle for HSBB Network Services will be monthly.

6.6.8 Public information: Each Access Provider must make available, on its publicly accessible website or through a self-service portal in accordance with subsection 6.6.12, access to a mechanism which allows any person to query:

(a) whether:

i. a premises is connected to a HSBB Network; or

- ii. the Access Provider intends to connect a premises to a HSBB Network within six (6) months;
- (b) whether the Access Provider offers the Layer 2 HSBB Network Service with QoS and/or the Layer 3 HSBB Network Service in respect of the premises;
- (c) the maximum bit rate at which the Access Provider offers the HSBB Network Service (subject to any necessary provisos or qualifications related to technology or network facility limitations);
- (d) the POIs at which the HSBB Network Service is available; and
- (e) information and parameters concerning service restoration including, without limitation, signal strength and throughput of its subscribers, equivalent to that which the Access Provider provides to itself.

The Access Provider shall ensure the information specified in this subsection 6.6.8 is accurate and made available as soon as the Access Provider makes that information available to itself and in any case, on and from the date of inclusion of the premises in the Implementation and Migration Plan or any subsequent updates.

~~5.29.36.6.9~~ **Implementation and Migration Plan:** The Access Provider shall, ~~no later than 90 days from the date the Variation Determination comes into force,~~ maintain and publish on ~~a~~ its publicly accessible website a detailed up-to-date implementation plan that provides its procedures and timing for the HSBB Network Services that includes:

- (a) the implementation plan covering a total period of not less than five (5) years;
- (b) the migration from copper to fibre at all existing nodes by location;
- (c) the construction of new nodes by location;
- (d) notification processes to Customers and Access Seekers for such migration and the minimum notice periods to be provided; and
- (e) ordering and provisioning procedures for HSBB Network Services including the applicable terms and conditions.

The Access Provider shall manage the implementation plan in a non-discriminatory manner. This includes giving the same information and priority to Access Seekers ~~who are similarly situated~~ as it gives to itself in the handling of the migration or orders for HSBB Network Services. The information provided to Access Seekers must allow Access Seekers to:

(f) market HSBB Network-based retail services to Customers and potential Customers;

(g) compete for the delivery of HSBB Network-based retail services to Customers and potential Customers; and

(h) order HSBB Network Services in order to deliver HSBB Network-based retail services to Customers and potential Customers,

on the same basis as the Access Provider (including with regard to Customers and potential Customers who are at the time acquiring retail services to which ANE Services or the Digital Subscriber Line Retail Service are an input).

~~5.29.4 **Completion of Work:** The Access Provider shall maintain and publish on a publicly accessible website an up-to-date list of locations where HSBB Network Services are available. The list shall be published within two (2) Business Days from the date of completion of the work specified at paragraphs 6.6.9(a) or 6.6.9(b) at each location.~~

~~5.29.5 **6.6.10 Availability to Access Seeker:** The Implementation and Migration Plan specified in subsection 6.6.9 and the list of locations specified in subsection shall be made available in ~~paper or~~ electronic form to any Access Seeker on request.~~

~~(a) an existing Access Seeker within five (5) Business Days from the date of inclusion of the premises in the Implementation and Migration Plan or any subsequent updates; or~~

~~(b) any Access Seeker on request.~~

~~5.29.6 An “existing Access Seeker” in paragraph is an Access Seeker who:~~

~~(a) has entered into an Access Agreement with an Access Provider for the provision of Full Access Service, Line Sharing Service, Sub-loop~~

~~Service, Bitstream Services (with and without Network Service) and/or Digital Subscriber Line Resale Service; and~~

~~(b) is acquiring the Facilities and/or Services specified in paragraph at premises that will be served by a HSBB Network Service (with or without QoS) within (5) years or less.~~

6.6.11 Mandatory Standard on Quality of Service: Each RAO for a HSBB Network Service shall:

(a) contain only terms and conditions which are consistent with the rights and obligations set out in any applicable Mandatory Standard on Quality of Service; and

(b) not contain any terms and conditions which are inconsistent with the rights and obligations set out in any applicable Mandatory Standard on Quality of Service.

6.6.12 Service fulfilment timeline: An Access Provider shall comply with the following service fulfilment timelines and obligations for the HSBB Network Service:

<u>Service Gateway (SG) configuration</u>	<u>The SG service configuration shall be performed by the Access Provider within five (5) Business Days from the date on which connectivity to the Access Seeker's equipment has been established.</u>
<u>Service availability check</u>	<ul style="list-style-type: none"><u>• The Access Provider shall enable the Access Seeker to check whether a premises is serviceable by the HSBB Network Service via its publicly accessible website or a self-service portal in accordance with subsection 6.6.8.</u><u>• The Access Provider shall provide the Access Seeker with access to the self-service portal upon establishment of the SG and service acceptance handover.</u><u>• The Access Seeker may request an appointment in an available appointment slot for a BTU installation in respect of a premises that is serviceable by the HSBB Network Service.</u><u>• For information about premises not available on its publicly accessible website or through the self-service</u>

	<u>portal, the Access Provider shall inform the Access Seeker whether a premises is serviceable by the HSBB Network Service within seven (7) days of an Access Seeker request.</u>
<u>Appointment with end users</u>	<ul style="list-style-type: none"> • <u>50% of BTU installation orders to be confirmed within 24 hours of the Access Seeker requesting an appointment in an available appointment slot.</u> • <u>80% of BTU installation orders to be confirmed within 48 hours of the Access Seeker requesting an appointment in an available appointment slot.</u> • <u>100% of BTU installation orders to be confirmed within 72 hours of the Access Seeker requesting an appointment in an available appointment slot.</u>
<u>Broadband Termination Unit (BTU) installation</u>	<ul style="list-style-type: none"> • <u>50% of BTU installation per month to be completed within 4 hours from the agreed installation time.</u> • <u>80% of BTU installation per month to be completed within 6 hours from the agreed installation time.</u> • <u>100% of BTU installation per month to be completed within 8 hours from the agreed installation time.</u>
<u>Return Order management</u>	<u>For any faulty or incomplete BTU installations, the Access Provider shall resolve the problem and complete the installation within twenty-one (21) days of Access Seeker notification.</u>
<u>SG upgrade/downgrade</u>	<u>Within five (5) Business Days of Access Seeker notification.</u>
<u>BTU upgrade/downgrade</u>	<u>Within two (2) Business Days of Access Seeker notification.</u>

6.6.13 Service assurance timeline: An Access Provider shall comply with the following service assurance timelines and obligations for the HSBB Network Service:

<u>Mean time to restore for fault due to infrastructure from Service Gateway to BTU</u>	<ul style="list-style-type: none"> • <u>80% of faults reports to be restored in 24 hours.</u> • <u>90% of faults reports to be restored in 48 hours.</u> • <u>100% of faults reports to be restored in 7 days.</u>
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<u>A complete failure of network elements and causing all services totally down</u>	<ul style="list-style-type: none"> • <u>80% of critical network faults per month to be restored within 4 hours.</u> • <u>100% of critical network faults per month to be restored within 48 hours.</u>
<u>Any fault relating to passive fibre breakdown</u>	<ul style="list-style-type: none"> • <u>60% of faults relating to passive fibre breakdown per month to be restored within 12 hours.</u> • <u>100% of faults relating to passive fibre breakdown per month to be restored within 48 hours.</u>
<u>On-site support</u>	<u>The Access Provider shall provide seven (7) days a week on-site support including on weekends and public holidays.</u>
<u>Appointment with end user</u>	<u>The Access Provider shall provide a service assurance portal to the Access Seeker which shall include the following functionality:</u> <ul style="list-style-type: none"> • <u>a common ticketing system to review and generate reports and progress updates; and</u> • <u>a common slotting system to enable the Access Seeker to view available appointment slots with the Access Seeker's end users.</u>
<u>Throughput</u>	<u>An Access Provider shall ensure throughput of 90% of the subscribed level 90% of the time on the speed tests for browsing performance.</u>
<u>Network Latency (Layer 2 HSBB Network Service with QoS only)</u>	<u>Not more than 50ms, 95% of the time</u>
<u>Service availability</u>	<u>Not less than 95%</u>

6.6.14 QinQ implementation. An Access Provider shall provide the QinQ implementation to the Access Seeker to allow the Access Seeker freedom of choosing their VLAN ID's. The QinQ features include:

(a) providing a simple Layer 2 VPN tunnel for the end user;

- (b) shielding the VLAN ID of the end user, so as to save the public network VLAN ID resource of the Access Seeker; and
- (c) enabling the Access Seeker to plan their private network VLAN ID to avoid any conflict with the Access Provider and other operators' VLAN IDs and to ensure that the Access Seeker's VLANs are not fully visible to the Access Provider.

6.6.15 Reporting: As required under paragraph 5.3.12(l), an Access Provider shall notify the Commission in writing of:

- (a) the locations at which the Access Provider offers for supply any services over the HSBB Network including to its own end user customers, together with the network types (e.g. fibre to the node or fibre to the home) which form the basis of the offer for supply at each location;
- (b) the locations at which the Access Provider supplies HSBB Network Services, together with the type of HSBB Network Service supplied at each location (being the Layer 2 HSBB Network Service with QoS or the Layer 3 HSBB Network Service);
- (c) the locations at which the Access Provider supplies an alternative commercially negotiated service to another Operator using the HSBB Network and any details of each such commercially negotiated service which may be requested by the Commission from time to time;
- (d) each Class of Service or QoS Class (as applicable); and
- (e) each bit rate offered in respect of each HSBB Network Service.

5.29.76.6.16 Modularity: An Access Provider must provide HSBB Network Service on a modular and unbundled basis so that the Access Seeker does not have to acquire network components, Facilities or Services that are not required for HSBB Network Services to be provided.

6.7 TRANSMISSION SERVICES

6.7.1 Application: This subsection 6.7 applies where access to a Transmission Service has been requested or is to be provided.

6.7.2 Forecasts: For the purposes of subsection 5.6.6, an Access Provider shall only request Forecasts where:

- (a) the maximum period of time covered by Forecasts regarding Transmission Services is one (1) year;
- (b) the minimum intervals or units of time to be used in Forecasts regarding Transmission Services is one (1) year; and
- (c) the maximum frequency to update or to make further Forecasts regarding Transmission Services is once a year.

6.7.3 Acknowledgement of receipt: For the purposes of subsection 5.7.5, an Access Provider shall acknowledge receipt of each Order for a Transmission Service within two (2) Business Days.

6.7.4 Time for acceptance or rejection: Subject to any shorter timeframe required under subsection 5.7.12, an Access Provider must notify an Access Seeker that an Order for a Transmission Service is accepted or rejected within ten (10) Business Days after:

- (a) receiving the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8; or
- (b) providing the Access Seeker with post-Order Service Qualification information under subsection 5.7.9, where the Access Provider did undertake post-Order Service Qualification for that Order under subsection 5.7.8.

6.7.5 Indicative delivery timeframe: For the purposes of paragraph 5.7.13(a)i, the indicative delivery timeframes for Transmission Services is:

- (a) if no new network facilities are required to supply the Transmission Services, twenty (20) Business Days; and

(b) if new network facilities are required to supply the Transmission Services, sixty (60) Business Days.

6.7.6 **Billing Cycle:** For the purposes of subsection 5.14.3, between the Operators, the Billing Cycle for Transmission Services will be monthly.

6.7.7 **Reporting:** As required under paragraph 5.3.12(l), an Access Provider shall notify the Commission in writing, in respect of each type of Transmission Service (i.e. any Trunk Transmission Service, Wholesale Local Leased Circuit Service or End-to-End Transmission Service) offered or supplied by the Access Provider, details of:

(a) each technically feasible network point at which a Transmission Service is offered and supplied (and, in the case of supply, the Access Seekers to whom the Transmission Services are supplied at those points);

(b) each network interface through which a Transmission Service is offered and supplied (and, in the case of supply, the Access Seekers to whom the Transmission Services are supplied using those interfaces);

(c) each bit rate at which a Transmission Service is offered and supplied (and, in the case of supply, the Access Seekers to whom the Transmission Services are supplied at those bit rates); and

(d) whether the Transmission Service is supplied in conjunction with any other Facility or Service.

6.7.8 **No bundling:** An Access Provider shall not require an Access Seeker to purchase a Transmission Service together with any other Transmission Service. For example, an Access Provider shall not require an Access Seeker to purchase a Trunk Transmission Service between a pair of technically feasible network transmission points with a Trunk Transmission Service between another pair of technically feasible network transmission points.

6.8 INFRASTRUCTURE SHARING

6.8.1 Application: This subsection 6.8 applies where Infrastructure Sharing has been requested or is to be provided.

6.8.2 Forecasts: For the purposes of subsection 5.6.6, an Access Provider shall only request Forecasts where:

(a) the maximum period of time covered by Forecasts regarding Infrastructure Sharing is one (1) year;

(b) the minimum intervals or units of time to be used in Forecasts regarding Infrastructure Sharing is one (1) year; and

(c) the maximum frequency to update or to make further Forecasts regarding Infrastructure Sharing is once a year.

6.8.3 Acknowledgement of receipt: For the purposes of subsection 5.7.5, an Access Provider shall acknowledge receipt of each Order for Infrastructure Sharing within two (2) Business Days.

6.8.4 Time for acceptance or rejection: Subject to any shorter timeframe required under subsection 5.7.12, an Access Provider must notify an Access Seeker that an Order for Infrastructure Sharing is accepted or rejected within ten (10) Business Days after:

(a) receiving the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8; or

(b) providing the Access Seeker with post-Order Service Qualification information under subsection 5.7.9, where the Access Provider did undertake post-Order Service Qualification for that Order under subsection 5.7.8.

6.8.5 Indicative delivery timeframe: For the purposes of paragraph 5.7.13(a)i, the indicative delivery timeframe for Infrastructure Sharing is forty (40) Business Days.

6.8.6 Billing Cycle: For the purposes of subsection 5.14.3, between the Operators, the Billing Cycle for Infrastructure Sharing will be monthly.

6.8.7 **Escorts:** If an Access Provider determines that it is necessary to have an escort present when employees or contractors of the Access Seeker wish to enter onto the Access Provider's property, the Access Provider shall:

(a) make such escort service available at all times during ordinary business hours;

(b) have such escort service on call (with no longer than a thirty (30) minute response time to attend at the Access Provider's property) outside ordinary business hours; and

(c) bear the costs of such escort service.

6.8.8 **Absence of escort:** For the purposes of subsection 6.8.7, if an escort does not arrive at the Access Provider's property within thirty (30) minutes of the scheduled commencement of the visit by the Access Seeker, the Access Seeker's staff may proceed to enter the Access Provider's property without an escort.

6.8.9 **Site register:** The Access Seeker must establish and maintain a register of all persons who visit the Access Provider's property on the Access Seeker's behalf, which must be made available for inspection by the Access Provider, upon request.

6.8.10 **Utilities and ancillary services:** The Access Provider must, where the relevant utilities and ancillary services are within the Access Provider's control, ensure that all necessary utilities and ancillary services are provided to enable the Access Seeker to benefit from such access to the same extent that the Access Provider does itself, including but not limited to:

(a) access to roads;

(b) access to land;

(c) power, including the provision of back-up power;

(d) environmental services (including but not limited to heat, light, ventilation and air-conditioning, fire protection);

(e) security, taking care to ensure that its agents, representatives or sub-contractors do not damage any Equipment, and keeping the location secure and protected from vandalism or theft; and

(f) site maintenance.

6.8.11 **Cost:** The utility costs in respect of the network facilities as contemplated in subsection 6.8.10 shall be apportioned (in accordance with fair and equitable principles) against the utility and ancillary costs charged to other Access Seekers at the relevant location.

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6.9 NETWORK CO-LOCATION SERVICE

6.9.1 Application: This subsection 6.9 applies where access to the Network Co-Location Service has been requested or is to be provided.

6.9.2 Forecasts: For the purposes of subsection 5.6.6, an Access Provider shall only request Forecasts where:

- (a) the maximum period of time covered by Forecasts regarding Network Co-Location Service is one (1) year;
- (b) the minimum intervals or units of time to be used in Forecasts regarding Network Co-Location Service is one (1) year; and
- (c) the maximum frequency to update or to make further Forecasts regarding Network Co-Location Service is once a year.

6.9.3 Acknowledgement of receipt: For the purposes of subsection 5.7.5, an Access Provider shall acknowledge receipt of each Order for a Network Co-Location Service within two (2) Business Days.

6.9.4 Time for acceptance or rejection: For the purpose of subsection 5.7.12, an Access Provider must notify an Access Seeker that an Order for a Network Co-Location Service is accepted or rejected within ten (10) Business Days after:

- (a) receiving the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8;
or
- (b) providing the Access Seeker with post-Order Service Qualification information under subsection 5.7.9, where the Access Provider did undertake post-Order Service Qualification for that Order under subsection 5.7.8.

6.9.5 Indicative delivery timeframe: For the purposes of paragraph 5.7.13(a)i, the indicative delivery timeframe for Network Co-Location Service is twenty (20) Business Days.

6.9.6 Billing Cycle: For the purposes of subsection 5.14.3, between the Operators, the Billing Cycle for Network Co-Location Services will be monthly.

6.9.7 **Inspection:** An Access Provider shall allow nominated employees or contractors of a potential Access Seeker to physically inspect network facilities of the Access Provider during normal business hours provided that:

(a) the Access Seeker has provided no less than five (5) Business Days' notice of its request to perform a physical inspection and details of its nominees; and

(b) the nominations made by the Access Seeker are reasonable, having regard to:

i. the position of each person and the number of persons nominated; and

ii. the position of each of the Access Provider's own personnel and the number of the Access Provider's personnel to which the Access Provider provides physical access to such facilities.

6.9.8 **Physical access:** Where required to fulfil an Order for a Network Co-Location Service, an Access Provider shall allow an Access Seeker, its employees and contractors to physically access the Access Provider's network facilities and the Access Seeker's Equipment, and to have physical control over the Access Seeker's Equipment located at such network facilities, at equivalent times and in accordance with equivalent processes and procedures as are applicable to itself. An Access Provider must not prevent or restrict access to any network facility or site for reasons concerning national or operational security reasons and may only apply reasonable security procedures and processes that comply with the same obligations that apply to Points of Interface under paragraph 5.9.11(b).

6.9.9 **Escorts:** If an Access Provider determines that it is necessary to have an escort present when employees or contractors of the Access Seeker wish to enter onto the Access Provider's property, the Access Provider shall:

(a) make such escort service available at all times during ordinary business hours;

(b) have such escort service on call (with no longer than a thirty (30) minute response time to attend at the Access Provider's property) outside ordinary business hours; and

(c) bear the costs of such escort service.

6.9.10 **Absence of escort:** For the purposes of subsection 6.9.9, if an escort does not arrive at the Access Provider's property within thirty (30) minutes of the scheduled commencement of the visit by the Access Seeker, the Access Seeker's staff may proceed to enter the Access Provider's property without an escort.

6.9.11 **Site register:** The Access Seeker must establish and maintain a register of all persons who visit the Access Provider's property on the Access Seeker's behalf, which must be made available for inspection by the Access Provider, upon request.

6.9.12 **Reservation of space:** An Access Provider shall not reserve space other than for its own current needs, its future needs, (calculated by use of a reasonably projected rate of growth over 2 years) and the needs of other Access Seekers who are currently occupying or have ordered space from that Access Provider.

6.9.13 **Allocation of space:** An Access Provider shall allocate space at each location where co-location is to be permitted in a non-discriminatory way and will treat other Access Seekers as it treats itself.

6.9.14 **No minimum space requirements:** An Access Provider shall not impose minimum space requirements on an Access Seeker.

6.9.15 **Re-configuration:** If there are space constraints at a particular location, an Access Provider shall take reasonable steps to optimise its usage of the space, including through the upgrading of Facilities or endeavouring to transfer the Equipment to an alternative location.

5.29-6.9.16 **Reporting:** As required under paragraph 5.3.12(l), an Access Provider shall notify the Commission in writing of:

(a) its space requirements over the three (3) year period from the date of such notification, together with a reconciliation of its reservation over the previous twelve (12) months with its actual space needs; and

(b) the locations of POIs and other Facilities which are the subject of subsection 0 including:

- i. details of the locations at which the Network Co-Location Service is provided to another Operator; and
- ii. details of locations in respect of which any request for Co-location was refused, together with the reasons for the refusal.

6.9.17 Preparatory work by the Access Seeker: If preparatory work is necessary for the purposes of allowing the Access Seeker to obtain access to or co-locate at or on an Access Provider's network facilities, such Access Provider shall permit the Access Seeker's employees or contractors to perform such preparatory work if the Access Seeker satisfies the Access Provider (acting reasonably and in accordance with the guidelines referred to below) that such employees or contractors have the necessary qualifications. Each Access Provider shall publish and make available a policy about the necessary qualifications of employees and contractors who will be permitted to perform preparatory work under this subsection 6.9.17, such policy to be non-discriminatory in its application to the Access Provider and the Access Seeker personnel who perform similar functions.

6.9.18 Preparatory work by the Access Provider: If the Access Provider agrees to perform preparatory work and does so on the basis of an estimated charge (e.g. based on a time and materials basis):

- (a) the Access Provider shall not exceed the estimate without providing the Access Seeker with prior written notice that:
 - i. the estimate will likely be exceeded; and
 - ii. a further estimate of the charges for the work necessary to complete the preparatory work; and
- (b) the Access Provider shall permit the Access Seeker to withdraw the request for preparatory work without penalty if the revised estimate exceeds the original estimate by more than 10% of the original estimate.

6.9.19 Delays: If the Access Provider agrees to perform preparatory work and the Access Provider is or is likely to be unable to perform such work within the agreed timeframe, the Access Provider shall:

- (a) notify the relevant Access Seeker of the delay to a delivery date, together with the reasons for the delay, as soon as practicable after the Access Provider becomes aware of the possible delay;
- (b) permit the Access Seeker notified under paragraph 6.9.19(a) to cancel the preparatory work without penalty if the delay is longer than fourteen (14) days; and
- (c) compensate the Access Seeker for the costs it has incurred as a result of delay, subject to the Access Seeker using reasonable endeavours to mitigate those costs.

6.9.20 Utilities and ancillary services: If an Access Provider has permitted access or physical co-location at a particular location or network facilities, that Access Provider must, where the relevant utilities and ancillary services are within the Access Provider's control, ensure that all necessary utilities and ancillary services are provided to enable the Access Seeker to benefit from such access or co-location to the same extent that the Access Provider does itself, including but not limited to:

- (a) access to roads;
- (b) access to land;
- (c) power, including the provision of back-up power;
- (d) environmental services (including but not limited to heat, light, ventilation and air-conditioning, fire protection);
- (e) security, taking care to ensure that its agents, representatives or sub-contractors do not damage any Equipment, and keeping the location secure and protected from vandalism or theft; and
- (f) site maintenance.

6.9.21 Cost: The utility costs in respect of the network facilities as contemplated in subsection 6.9.20 shall be apportioned (in accordance with fair and equitable principles) against the utility and ancillary costs charged to other Access Seekers at the relevant location.

6.9.22 **Security caging:** An Access Provider shall not require the use of cages or similar structures to physically segregate co-located Equipment, or Equipment located at or on network facilities of the Access Provider.

6.9.23 **Equipment allowance:** An Access Provider shall permit an Access Seeker to locate Equipment on or at the Access Provider's network facilities which is necessary for the purposes of obtaining the benefit of access to the network services and network facilities provided in accordance with this Standard, including but not limited to multi-functional Equipment which may also be used for purposes other than those specified in this subsection 6.9.23.

6.9.24 **Marking:** All Operators shall mark or label their Equipment in such a manner that they can be easily identified as the Equipment of the Operator.

6.9.25 **Maintenance:** An Access Provider shall permit, and do all things reasonably necessary to allow, an Access Seeker to maintain its Equipment at or on the network facilities to which access has been granted under subsection 6.9.8. This may include, for example, the provision of physical access. For the purposes of this subsection 6.9.25, an Access Seeker shall be permitted to maintain its Equipment at or on the network facilities if the Access Provider itself maintains, or allows external contractors or other third parties to maintain, similar Equipment on the network facilities.

6.9.26 **Extensions:** The Access Provider shall reasonably permit the Access Seeker, at the Access Seeker's cost, to extend network facilities of the Access Provider as may reasonably be required to meet the Access Seeker's requirements in the circumstances and to the extent technically feasible.

6.9.27 **Publication of locations:** The Access Provider must make available on its publicly available website the locations at which the Network Co-Location Service is available. An Access Provider may decline to publish for national or operational security reasons information in connection with particular locations where Network Co-Location is available, but in such circumstances, an Access Provider must:

- i. promptly provide such information to other Operators on request, subject only to the Operators entering into a confidentiality agreement in accordance with this Standard;

- ii. offer to provide, and if the offer is accepted, provide, updated location details to such Operators as locations are withdrawn, introduced and changed; and
- iii. provide all such information to the Commission.

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5.306.10 **DOMESTIC CONNECTIVITY TO INTERNATIONAL SERVICES**

5.30.16.10.1 **Application:** This subsection 6.10 applies where access to Domestic Connectivity to International Services ~~has been requested or is~~ ~~are~~ to be provided.

6.10.2 **Forecasts:** For the purposes of subsection 5.6.6 an Access Provider shall only request Forecasts where:

- (a) the maximum period of time covered by Forecasts regarding Domestic Connectivity to International Services is one (1) year;
- (b) the minimum intervals or units of time to be used in Forecasts regarding Domestic Connectivity to International Services is one (1) year; and
- (c) the maximum frequency to update or to make further Forecasts regarding Domestic Connectivity to International Services is once a year.

5.30.2 **Modularity:** ~~An Access Provider must offer each Domestic Connectivity to International Service on a modular basis.~~

6.10.3 **Acknowledgement of receipt:** For the purposes of subsection 5.7.5, an Access Provider shall acknowledge receipt of each Order for Domestic Connectivity to International Services within two (2) Business Days.

6.10.4 **Time for acceptance or rejection:** Subject to any shorter timeframe required under subsection 5.7.12, an Access Provider must notify an Access Seeker that an Order for Domestic Connectivity to International Services is accepted or rejected within ten (10) Business Days after:

- (a) receiving the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8; or
- (b) providing the Access Seeker with post-Order Service Qualification information under subsection 5.7.9, where the Access Provider did undertake post-Order Service Qualification for that Order under subsection 5.7.8.

6.10.5 Indicative delivery timeframe: For the purposes of paragraph 5.7.13(a)i, the indicative delivery timeframe for Domestic Connectivity to International Services is ten (10) Business Days.

6.10.6 Billing Cycle: For the purposes of subsection 5.14.3, between the Operators, the Billing Cycle for Domestic Connectivity to International Services will be monthly.

5.30.36.10.7 Any cCable sSystem: An Access Provider must provide connection services to an Access Seeker:

- (a) in respect of a cable system which the Access Seeker is authorised to connect to, irrespective of whether that Access Seeker is authorised by a third party or by itself; and
- (b) to enable transit between cable systems.

5.30.46.10.8 New Ccable Ssystems: An Access Provider must provide each Domestic Connectivity for International Service ~~on a transparent and non-discriminatory basis~~ in respect of all existing and new cable systems to which the Access Provider has access on an equivalent basis to that which it provides to itself. Such services must be provided from the 'ready-for-service' date of the relevant cable system.

6.10.9 Access and co-location: An Access Provider must offer, and if requested by an Access Seeker, provide in accordance with this Standard, physical access to, and physical co-location at, any network facility or site to which the Access Seeker requires physical access or physical co-location in order to have the benefit of a Domestic Connectivity to International Service. An Access Provider must not prevent or restrict access to any network facility or site for reasons concerning national or operational security reasons and may only apply reasonable security procedures and processes that comply with the same obligations that apply to Points of Interface under paragraph 5.9.11(b).

6.10.10 Escorts: If an Access Provider determines that it is necessary to have an escort present when employees or contractors of the Access Seeker wish to enter onto the Access Provider's property, the Access Provider shall:

- (a) make such escort service available at all times during ordinary business hours;

(b) have such escort service on call (with no longer than a thirty (30) minute response time to attend at the Access Provider's property) outside ordinary business hours; and

(c) bear the costs of such escort service.

6.10.11 Absence of escort: For the purposes of subsection 6.10.10, if an escort does not arrive at the Access Provider's property within thirty (30) minutes of the scheduled commencement of the visit by the Access Seeker, the Access Seeker's staff may proceed to enter the Access Provider's property without an escort.

6.10.12 Site register: The Access Seeker must establish and maintain a register of all persons who visit the Access Provider's property on the Access Seeker's behalf, which must be made available for inspection by the Access Provider, upon request.

6.10.13 Publication of locations: The Access Provider must make available on its publicly available website the locations at which the Domestic Connectivity to International Services is available. An Access Provider may decline to publish for national or operational security reasons information in connection with particular locations where Domestic Connectivity to International Services is available, but in such circumstances, an Access Provider must:

i. promptly provide such information to other Operators on request, subject only to the Operators entering into a confidentiality agreement in accordance with this Standard;

ii. offer to provide, and if the offer is accepted, provide, updated location details to such Operators as locations are withdrawn, introduced and changed; and

iii. provide all such information to the Commission.

6.11 DUCT AND MANHOLE ACCESS

6.11.1 Application: This subsection 6.11 applies where Duct and Manhole Access has been requested or is to be provided.

6.11.2 Forecasts: For the purposes of subsection 5.6.6, an Access Provider shall only request Forecasts where:

- (a) the maximum period of time covered by Forecasts regarding Duct and Manhole Access is one (1) year;
- (b) the minimum intervals or units of time to be used in Forecasts regarding Duct and Manhole Access is one (1) year; and
- (c) the maximum frequency to update or to make further Forecasts regarding Duct and Manhole Access is once a year.

6.11.3 Acknowledgement of receipt: For the purposes of subsection 5.7.5, an Access Provider shall acknowledge receipt of each Order for Duct and Manhole Access within two (2) Business Days.

6.11.4 Time for acceptance or rejection: Subject to any shorter timeframe required under subsection 5.7.12, an Access Provider must notify an Access Seeker that an Order for Duct and Manhole Access is accepted or rejected within ten (10) Business Days after:

- (a) receiving the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8; or
- (b) providing the Access Seeker with post-Order Service Qualification information under subsection 5.7.9, where the Access Provider did undertake post-Order Service Qualification for that Order under subsection 5.7.8.

6.11.5 Indicative delivery timeframe: For the purposes of paragraph 5.7.13(a)i, the indicative delivery timeframe for Duct and Manhole Access is ten (10) Business Days.

6.11.6 Billing Cycle: For the purposes of subsection 5.14.3, between the Operators, the Billing Cycle for Duct and Manhole Access will be monthly.

6.11.7 Reporting: As required under paragraph 5.3.12(l), an Access Provider shall notify the Commission in writing details of:

- (a) each area in which the Access Provider has been granted exclusive rights to develop or maintain mainline ducts and associated manhole infrastructure;
- (b) each area in which an Access Seeker has requested the supply of Duct and Manhole Access in respect of mainline ducts and associated manholes but in which the Access Provider has not been granted exclusive rights to develop or maintain the duct and manhole infrastructure;
- (c) each location in which an Access Seeker has requested the supply of Duct and Manhole Access, in which there is no room for the Access Seeker to install its own sub-ducts and in which the Access Provider has therefore offered to supply access to its own sub-ducts;
- (d) each location in which an Access Seeker has requested the supply of Duct and Manhole Access, in which there is no room for the Access Seeker to install its own sub-ducts and in which there is also no room in the Access Provider's own sub-ducts; and
- (e) each area in which the Access Provider has built or assumed maintenance obligations in respect of lead-in ducts and associated manhole infrastructure.

6.11.8 Escorts: If an Access Provider determines that it is necessary to have an escort present when employees or contractors of the Access Seeker wish to enter onto the Access Provider's property, the Access Provider shall:

- (a) make such escort service available at all times during ordinary business hours;
- (b) have such escort service on call (with no longer than a thirty (30) minute response time to attend at the Access Provider's property) outside ordinary business hours; and
- (c) bear the costs of such escort service.

6.11.9 **Absence of escort:** For the purposes of subsection 6.11.8, if an escort does not arrive at the Access Provider's property within thirty (30) minutes of the scheduled commencement of the visit by the Access Seeker, the Access Seeker's staff may proceed to enter the Access Provider's property without an escort.

6.11.10 **Site register:** The Access Seeker must establish and maintain a register of all persons who visit the Access Provider's property on the Access Seeker's behalf, which must be made available for inspection by the Access Provider, upon request.

6.11.11 **Joint survey:** For the purposes of subsection 5.7.8 and subject to the timeframe specified under subsection 5.7.9, a joint survey may be conducted by the Access Provider and the Access Seeker, along with surveyors, where necessary, to determine the availability of requested ducts and manholes at a particular area, provided that the scope of the survey be jointly decided, and any costs are necessarily incurred, itemised and agreed between the parties.

6.11.12 **Capacity Allocation Policy:** In addition to subsection 5.7.32, the Access Provider's Capacity Allocation Policy for Duct and Manhole Access shall set out the principles to be applied on an equivalent basis between itself, its related bodies corporate and other Access Seekers, where:

(a) the Access Provider has already taken steps to optimise space by using the current available technology, including removing any unused cables;

(b) the Access Provider shall determine the available space only after considering:

i. the requirements for ducts and space in manholes for the Access Provider's then existing maintenance purposes; and

ii. the reservation of the ducts or sub-ducts for future use by the Access Provider or another Access Seeker, applicable on an equivalent basis for six months, upon receipt of an Order; and

(c) the allocation of available space shall be:

i. on a first-come, first-served basis;

ii. applicable to reserved capacity that is not used by either the Access Provider or an Access Seeker within the seven months from the date of the Order; and

iii. to the extent possible, based on efficient allocation principles to minimise space wastage.

6.11.13 Operational manuals: An Access Provider shall establish reasonable processes and procedures relating to Duct and Manhole Access including but not limited to:

(a) safety, security and occupational health and safety;

(b) laying, maintenance, restoration and removal of cables;

(c) entry to manholes; and

(d) sealing or closing of manholes.

The Access Provider's processes and procedures for Duct and Manhole Access shall:

(e) not be intentionally designed to deny or have the effect of denying or delaying the Access Seeker's access to ducts and manholes;

(f) not completely or substantially prohibit an Access Seeker from physically accessing ducts and manholes unless the Access Provider has been directed in writing to do so by the Government (in which case, the Access Provider shall notify the Commission); and

(g) be no more restrictive or onerous than the processes and procedures that the Access Provider imposes on its own personnel who physically access ducts and manholes.

6.11.14 Ground of refusal: In addition to the grounds of refusal in subsection 5.4.11, an Access Provider may refuse an Access Request to Duct and Manhole Access to the extent (and only to the extent that) the Access Provider has entered into an exclusive arrangement for access to duct and manhole infrastructure in Putrajaya with the Government of Malaysia and such arrangement has been entered into (without extension or amendment) prior to

the Effective Date of this Determination. For the sake of clarity, subsection 5.4.19 applies to any refusal under this subsection.

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5.31.6.12 **DIGITAL TERRESTRIAL BROADCASTING—(DTB) MULTIPLEXING SERVICE**

5.31.16.12.1 **Application:** This subsection 6.12~~only~~ applies where access to the to an Access Provider which provides or is required to provide a DTB Digital Terrestrial Broadcasting Multiplexing Service has been requested or is to be provided.

6.12.2 **Forecasts:** For the purposes of subsection 5.6.6, an Access Provider shall only request Forecasts where:

- (a) the maximum period of time covered by Forecasts regarding Digital Terrestrial Broadcasting Multiplexing Service is one (1) year;
- (b) the minimum intervals or units of time to be used in Forecasts regarding Digital Terrestrial Broadcasting Multiplexing Service is one (1) year; and
- (c) the maximum frequency to update or to make further Forecasts regarding Digital Terrestrial Broadcasting Multiplexing Service is once a year.

6.12.3 **Acknowledgement of receipt:** For the purposes of subsection 5.7.5, an Access Provider shall acknowledge receipt of each Order for Digital Terrestrial Multiplexing Service within two (2) Business Days.

6.12.4 **Time for acceptance or rejection:** Subject to any shorter timeframe required under subsection 5.7.12, an Access Provider must notify an Access Seeker that an Order for Digital Terrestrial Multiplexing Service is accepted or rejected within ten (10) Business Days after:

- (a) receiving the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8;
or
- (b) providing the Access Seeker with post-Order Service Qualification information under subsection 5.7.9, where the Access Provider did undertake post-Order Service Qualification for that Order under subsection 5.7.8.

6.12.5 Indicative delivery timeframe: For the purposes of paragraph 5.7.13(a), the indicative delivery timeframe for Digital Terrestrial Broadcasting Multiplexing Service is twenty (20) Business Days.

6.12.6 Billing Cycle: For the purposes of subsection 5.14.3, between the Operators, the Billing Cycle for Digital Terrestrial Broadcasting Multiplexing Services will be monthly.

5.31.26.12.7 Bit rate allocation: An Access Provider shall specify a standard bit rate allocation suitable for a standard definition television broadcasting service with associated stereo audio. An Access Provider shall also specify a standard bit rate allocation suitable for a high definition television broadcasting service. The Access Provider shall allocate to each Access Seeker the specified standard bit rate allocation (whether for standard definition or high definition television), except if a lower quality of service is requested by the Access Seeker.

5.31.36.12.8 Encryption: An Access Provider shall only apply conditional access to an Access Seeker's Transport Stream if specifically requested to do so by the Access Seeker.

5.31.46.12.9 Redundancy: An Access Provider shall provide redundancy in respect of the Digital Terrestrial Broadcasting Multiplexing Service to ensure availability of the Access Seeker's service at all times requested.

5.31.56.12.10 Compression: An Access Seeker must provide its Transport Stream to the Access Provider at the standard bit rate allocation specified by the Access Provider, including digital compression as appropriate.

6.12.11 Technical Standards: An Operator must comply with the Commission Determination on the Mandatory Standard for Free to Air Transmission of Digital Terrestrial Television Service, Determination ~~No. 2 of 2006~~ No. 1 of 2011 including such modification or variation and any other mandatory standards as may be determined by the Commission from time to time.

6.12.12 Reporting: As required under paragraph 5.3.12(l), an Access Provider shall notify the Commission in writing of:

(a) the standard bit rate allocation for each standard definition and high definition television broadcasting service as specified under subsection 6.12.7; and

(b) each transport stream subject to conditional access and details of such conditions as applicable under subsection 6.12.8.

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6.13 MVNO ACCESS

6.13.1 Application:

- (a) This subsection 6.13 applies where MVNO Access has been requested or is to be provided.
- (b) The Content Obligations do not apply in respect of MVNO Access, with the exception of the following:
 - i. subsection 5.6 (Forecasting Obligations);
 - ii. subsection 5.7 (Ordering and Provisioning Obligations);
 - iii. subsection 5.14 (Billing and Settlement Obligations);
 - iv. subsection 5.17 (Term, Suspension and Termination Obligations); and
 - i.v. subsection 5.19 (Legal Boilerplate Obligations).
- (c) For clarity, the Disclosure Obligations and Negotiation Obligations under this Standard apply to MVNO Access in addition to the obligations set out under paragraph 6.13.1(b).

6.13.2 Forecasts: For the purposes of subsection 5.6.6, an Access Provider may determine the Forecasts which it requires from an Access Seeker to provide MVNO Access including with regard to:

- (a) the network components, Facilities or Services to be supplied as part of MVNO Access;
- (b) the maximum periods covered by the Forecasts;
- (c) the minimum intervals or units of time used in Forecasts; and
- (d) the maximum frequency of the Forecasts or updates to the Forecasts.

6.13.3 Limitation of Forecasts: An Access Provider must ensure that Forecasts under subsections 5.6.6 and 6.13.2 are no more onerous than either of:

- (a) what is necessary for the Access Provider to supply MVNO Access without adversely affecting the Access Provider's Network; and
- (b) the forecasting which the Access Provider provides to itself for network planning and provisioning equivalent services.

6.13.4 Acknowledgement of receipt: Subject to any shorter timeframe required under subsection 5.7.5, an Access Provider shall acknowledge receipt of each Order for MVNO Access within two (2) Business Days.

6.13.5 Time for acceptance or rejection: For the purpose of subsection 5.7.12, an Access Provider must notify an Access Seeker that an Order for MVNO Access is accepted or rejected within ten (10) Business Days after:

- (a) receiving the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8; or
- (b) providing the Access Seeker with post-Order Service Qualification information under subsection 5.7.9, where the Access Provider did undertake post-Order Service Qualification for that Order under subsection 5.7.8.

6.13.6 Indicative delivery timeframe: For the purpose of paragraph 5.7.13(a)i, the indicative delivery timeframe for MVNO Access is forty (40) Business Days.

6.13.7 Billing Cycle: For the purposes of subsection 5.14.3, between the Operators, the Billing Cycle for MVNO Access will be monthly.

6.13.8 Reporting: The Access Provider must report to the Commission information and details relating to MVNO Access which may be requested by the Commission.

[Note: MCMC is considering the extent to which an Access Provider ought to be required to report to the Commission any details of MVNO Access.]

6.13.9 Prohibited use of Customer information: The Access Provider is expressly prohibited from using any Access Seeker's Customer information to market or offer to supply its goods or services to that or any other Customer, except where:

(a) the Customer information is publicly available; or

(b) the Customer information has been received or developed by the Access Provider from sources other than the Access Seeker,

and, in either case, the information has not been collected or generated with reference to, or combined with or compared to, information provided in connection with the Access Provider's supply of the MVNO Access. This includes any use or intended use by the Access Provider to dissuade that Customer from entering into a contractual relationship with the Access Seeker for retail services that use the MVNO Access as an input or more generally, to persuade that Customer to enter into a contractual relationship with the Access Provider for the Access Provider's retail services.

6.13.10 Modularity: An Access Provider must provide MVNO Access on a modular and unbundled basis so that the Access Seeker does not have to acquire network components, Facilities or Services that are not required for MVNO Access to be provided.

SECTION 6: SECTION 7: STANDARD ADMINISTRATION AND COMPLIANCE

6.47.1 ENFORCEMENT OF THE STANDARD

6.1.17.1.1 Legislative Background: The Act governs:

- (a) the manner in which the Commission may develop and apply the Standard; and
- (b) the operation of the Standard.

6.1.27.1.2 Mandatory Standard: Compliance with this Standard is mandatory.

6.1.37.1.3 Compliance directions from the Commission: For the purposes of section 51 of the Act, the Commission may direct persons or a class of persons to comply with the Act. A person who is subject to this Standard under subsection 3.2.1 is required to comply with the Standard under subsection 105(3) of the Act. Under section 51, the Commission may direct a person specified in subsection 3.2.1 to comply with subsection 105(3) of the Act.

6.1.47.1.4 Content Obligations, Service Specific Obligations and Commission directions: In respect of Content Obligations contained in subsection 5.5 to 5.19~~5.24~~ and the Service Specific Obligations contained in section 6 of this Standard, the Commission may make a direction with the effect of:

- (a) requiring a person to incorporate particular content into their ~~Access Reference Document~~ Reference Access Offer or an Access Agreement; or
- (b) requiring a person to comply with the obligation itself, irrespective of whether it is contained in the ~~Access Reference Document~~ Reference Access Offer, or any Access Agreement, or not; or
- (c) both.

6.1.57.1.5 Failure to comply with direction: Failure to comply with a direction of the Commission which requires compliance with the Standard exposes the person who received the direction to a penalty under section 109 of the Act.

6.1.67.1.6 Effect of compliance: Compliance with this Standard shall be a defence against any prosecution, action or proceeding of any nature, whether in a court or otherwise, taken against a person who is subject to the Standard with respect to a matter dealt with by this Standard.

6.27.2 IMPLEMENTATION OF THE STANDARD

6.2.47.2.1 Negotiating benchmark: An Operator must comply with the Standard when preparing any Reference Access Offer and when entering into any Access Agreements.

6.2.27.2.2 Undertakings: An Operator must comply with this Standard when lodging an undertaking with the Commission under section 110 of the Act.

6.2.37.2.3 Dispute Resolution Procedures: Operators may rely upon the Standard when making submissions during dispute resolution under the Dispute Resolution Procedures or under section 151 or subsection 229(1) of the Act.

6.2.47.2.4 Existing agreements: Parties to existing agreements executed prior to the Effective Date ~~or the date the Variation Determination comes into force, whichever is applicable,~~ must review such agreements to ensure compliance with this Standard. Such agreements should be amended according to the requirements of the Standard no later than 210 days after the Effective Date ~~or after the date the Variation Determination comes into force, whichever is applicable,~~ or by any other date as stipulated by the Commission. If the Parties are unable to ~~a~~effect such amendments, the Parties shall first attempt to resolve the dispute in accordance with the Dispute Resolution Procedures. If the Parties to the disputes cannot or otherwise fail to reach an agreement, either Party may notify a dispute in accordance with Chapter 7 of Part V of the Act.

6.2.57.2.5 Registration of ~~new~~ Access Agreements and undertakings: When considering an application for registration of an Access Agreement or an undertaking, the Commission will evaluate the agreement and undertaking (as the case may be) for compliance with:

- (a) the Act; and
- (b) this Standard;

without limitation.

~~6.2.6~~6.2.7.2.6 **Timeline for Implementation:** Each Access Provider shall prepare, maintain and/or modify an ~~an~~ ARD Reference Access Offer in relation to Facilities or Services on the Access List Determination no later than 90 days after the Effective Date ~~or after the Variation Determination comes into force, whichever is applicable,~~ or by any other date as stipulated by the Commission.

~~6.3.7.3~~ **COMPLIANCE REVIEW**

~~6.3.17.3.1~~ 6.3.17.3.1 **General compliance review:** Assessment by the Commission for compliance with this Standard may occur at any time:

- (a) by formally requesting information from a relevant Operator (for example, under Chapter 5 of Part V of the Act); or
- (b) by auditing Operators for compliance from time to time (for example, under Chapter 4 of Part V of the Act).

~~6.3.27.3.2~~ 6.3.27.3.2 **Specific compliance:** The Commission may ~~also~~ check for compliance with this Standard in the following circumstances, without limitation:

~~(a)~~ (a) at the time the Commission is reviewing a Reference Access Offer, the Commission may check the Reference Access Offer for compliance with the Standard;

~~(a)(b)~~ (a)(b) at the time the Commission is considering an Access Agreement for registration, the Commission may check the Access Agreement for compliance with the Standard;

~~(b)(c)~~ (b)(c) upon the notification of a dispute the Commission may check for compliance with the Standard in such a way that may allow the Commission to resolve the dispute in accordance with the Standard; and

~~(c)(d)~~ (c)(d) the Commission may check an undertaking for compliance with the Standard when assessing an undertaking lodged by an Operator.

~~6.4.7.4~~ **TRANSITIONAL MEASURES**

~~6.4.17.4.1~~ 6.4.17.4.1 **Notice procedures for removal ~~or~~ replacement:** If the Commission removes, varies or replaces ~~a~~ Facilities or Services ~~on~~ in the Access List under section 146 or section 147 of the Act, and an Access Provider wishes to

terminate or change the terms of the supply of that ~~f~~Facility or ~~s~~Service, the Access Provider may only do so in a manner that is consistent with the supply of that ~~f~~Facility or ~~s~~Service to itself, and must provide notice of its intention to terminate or vary to all Access Seeker-s to whom it is supplying that ~~f~~Facility or ~~s~~Service.

6.4.27.4.2 Notice period: The notice period referred to in subsection 7.4.1 must be no shorter than:

- (a) the period of time between the time of giving the notice and the time at which the Access Provider is proposing to no longer provide the Facilities or Services to itself; or
- (b) twelve (12) months.

6.4.37.4.3 Contents of notice of variation or replacement: The notice to be provided by the Access Provider under subsection 7.4.1 when the Commission varies, removes or replaces the Facilities or Services ~~on~~in the Access List Determination, must state:

- (a) when the variation or replacement will come into effect;
- (b) how the variation or replacement is likely to affect the Access Seeker; and
- (c) any alternative Facilities or Services~~–~~ that may be available to be provided by the Access Provider to the Access Seeker and the terms and conditions ~~of~~on which such alternative arrangements are made available.

6.57.5 REVIEW OF THE STANDARD

6.5.17.5.1 Purpose: The purpose of this subsection of the Standard is to outline some of the circumstances under which the Standard may be reviewed by the Commission. It is not an exhaustive list of the Commission's powers of review.

6.5.27.5.2 General review: The Commission will review this Standard:

- (a) at least once every three (3) years; ~~or~~
- (b) as and when the Minister so directs under section 7 of the Act; or

- (c) as and when the Commission considers it necessary in ~~O~~order to pursue or preserve the goals of the Standard and the Act.

~~6.5.37.5.3~~ **Specific review:** The Commission may review the operation of the Standard on the occurrence of one or more of the following events:

- (a) where the Minister exercises his or her power to modify, vary or revoke directions (under section 8, Chapter 1 of Part II of the Act) ~~D~~determinations (under section 11, Chapter 2 of Part II of the Act) and declarations (under section 14, Chapter 3 of Part II of the Act);
- (b) where the Commission exercises its power to modify, vary or revoke a direction (under section 52 of the Act) or ~~D~~determination (under section 56 of the Act);
- (c) where the Commission exercises its power (under section 101 of the Act) to revoke a voluntary industry code, on the basis that it is satisfied that the voluntary industry code is no longer consistent with the objects of the Act, any relevant instrument made under the Act, or any relevant provisions of the Act;
- (d) where the Commission exercises its power to add or remove Facilities or Services to or from the Access List (under section 146 of the Act);
- (e) where the Commission exercises its power (under section 106 of the Act) to determine the modification, variation or revocation of a mandatory ~~S~~sstandard on the basis that it is satisfied that the mandatory ~~S~~sstandard is no longer consistent with the objects of the Act, any relevant instrument made under the Act, or any relevant provisions of the Act;
- (f) where an industry forum submits a new voluntary industry code to replace an existing one for that industry (under section 102 of the Act);
- (g) where any event occurs which may alter the general principles of access (~~F~~for example, this may occur in the course of dispute resolution, if it becomes apparent that a matter in the Standard should be revised or when a new issue arises); or

- (h) where an exogenous development occurs which warrants a review by the Commission of the Standard (~~F~~or example, this may occur due to technological change).

6.5.47.5.4 Request for review: Any person may request the Commission to modify any provision of the Standard by submitting a notice to the Commission specifying:

- (a) the provisions of the Standard that it seeks to have ~~eliminated~~ removed, modified or added;
- (b) a clear statement of the reasons why the person believes that such action is justified; and
- (c) alternative approaches that, if adopted, would achieve the Commission's stated goals in a more efficient and effective manner.

6.5.57.5.5 Assessment of request for review: In assessing a ~~petition~~ request under subsection 7.5.4, the Commission will take account of all relevant factors, including:

- (a) whether a review is justified on the basis submitted by the person;
- (b) the period of time since the last review of the Standard;
- (c) the objects of the Act; and
- (d) any other factor that the Commission considers relevant.

6.5.67.5.6 Review process: In accordance with the Act, a review of the Standard by the Commission will involve the following key stages:

- (a) **Public notice:** the Commission will issue a public notice to announce that a review of the Standard is to take place. This notice will detail the scope of the review, the matters to be considered in the review, the stages in the review process and the time-line for the review (including the period in which public comment will be accepted by the Commission).

- (b) **Public comment:** after a public notice of the review has been issued, the Commission shall (for a specified period) accept public comment and submissions regarding the review of the Standard.
- (c) **Internal review:** upon the completion of a period of public comment, the Commission will commence an internal review of the Standard. This will include assessing the public or external comment received during the review process and will aim to publish a list of issues ~~and a draft of proposed changes to the Standard.~~

~~**Draft changes to the Standard:** once the Commission completes its internal review of the Standard, it may publish its draft proposed changes to the Standard in order to receive final public comment regarding the review.~~

- (d) **Finalisation:** once the ~~draft changes to the Standard have been publicly issued and a period for final public comment and review has lapsed~~ internal review is completed, the Commission may finalise the proposed changes to the Standard.

6.5.77.5.7 **Outcome of a review:** Following a review, the Commission may or may not choose to modify, vary or revoke the Standard in accordance with sections 56(2) and 106 of the Act.

ANNEXURE A: DISPUTE RESOLUTION PROCEDURES

1. Introduction

1.1 Subject to subsection 1.2(c), an Access Provider and an Access Seeker shall adopt and comply with ~~the~~these Dispute Resolution Procedures in relation to any dispute which may arise between an Access Seeker and an Access Provider in relation to or in connection with the supply of Facilities or Services to which the Standard applies (~~Access~~ **Dispute**).

1.2 The following Dispute Resolution mechanisms are discussed in this section:

~~(a) 1.2.1~~ inter-~~P~~party working groups;

~~(b) 1.2.2~~ interconnect steering group; and

~~(c) 1.2.3~~ subject to specific resolution of disputes, being:

~~(a)i.~~ technical disputes (which must follow the procedure set out in section 5 of this Annexure if they cannot be resolved through the application of the general dispute resolution provisions in sections 3 and 4 of this Annexure);

~~(b)ii.~~ Billing Disputes (as defined in subsection ~~6.18-7.1 of this Annexure~~), which must follow the procedures set out in section 6 of this Annexure; or

~~(c)iii.~~ any other types of disputes, which, if cannot be resolved through the application of the general dispute resolution provisions in sections 2, 3 and 4 of this Annexure, must be referred to the Commission for resolution.

1.3 A ~~d~~Dispute ~~between Parties regarding any matter dealt with under this Standard~~ shall first be attempted to be resolved by negotiation between the ~~P~~parties. If the ~~P~~parties to the ~~d~~Disputes cannot or otherwise fail to reach an agreement, the ~~P~~parties shall always be entitled to seek resolution of the ~~d~~Dispute by the Commission in accordance with section 151 of the Act, and the Commission will decide the dispute if it is satisfied that:

(a) the parties will not reach agreement, or will not reach agreement in a reasonable time;

- (b) the notification of the eDispute is not trivial, frivolous or vexatious; and
- (c) the resolution of the eDispute would promote the objects in the Act.

An Access Provider shall not prevent the Access Seeker from notifying a eDispute to the Commission in accordance with the Act.

- 1.4 For clarification, unless stated otherwise, all references to sections, subsections and paragraphs in this Annexure are references to sections, subsections and paragraphs of this Annexure.

2. General

- 2.1 ~~Until expiry of these Dispute Resolution Procedures, an An~~ Operator may not commence court proceedings relating to ~~that a eDispute~~ which is the subject of these Dispute Resolution Procedures until it has complied with each applicable process in these Dispute Resolution Procedures, other than an application for urgent interlocutory relief. Nothing in this subsection shall be construed as ousting the jurisdiction of any court.
- 2.2 An Operator shall ensure that its representatives acting in relation to a eDispute are of sufficient seniority and have authority to settle ~~an access eDispute~~ on behalf of the Operator. At the commencement of the Dispute Resolution Procedures, each Operator must notify the other Operator of the scope of the authority of each of their representatives. If, in the course of the Dispute Resolution Procedures, it is identified that the matters to be resolved are outside the initial term of reference for which authority was given to a representative, an Operator may require that those matters be referred to more senior officers of that Operator who have authority to settle those matters.
- 2.3 During a eDispute and any Dispute Resolution process invoked in accordance with this Annexure, an Access Provider and Access Seeker must continue to fulfil their obligations under the Access Agreement between them.
- 2.4 Subject to subsection 2.5, the parties to a eDispute shall exchange information of a type described in this Standard during the course of, and to facilitate, resolution of ~~thesuch a~~ eDispute.
- 2.5 Confidential Information of a Pparty which is disclosed, and any other oral or written submissions made by a Pparty or a Pparty's representatives during the course of any Dispute Resolution process will be subject to the confidentiality

restrictions in relevant confidentiality provisions contained in the Confidentiality Agreement prepared in accordance with subsection 5.3.8 of the Mandatory Standard on Access (**the Standard**).

- 2.6 A **P**party must not use information obtained under subsection 2.4 or described in subsection 2.5 above for any purpose other than to resolve the **e**Dispute.
- 2.7 Subject to Chapter 7 of Part V of the Act, an arbitrator of a **e**Dispute (including a Technical Expert or the Commission, in accordance with this Annexure) may decide not to determine the **e**Dispute if the arbitrator considers that the **e**Dispute is trivial, frivolous or vexatious, or if there is insufficient evidence before the arbitrator to determine the **e**Dispute.
- 2.8 The costs of the arbitration are to be shared equally between the parties, unless the arbitrator of the **e**Dispute has decided not to determine the **e**Dispute in accordance with subsection 2.7. If an arbitrator decides not to determine the **e**Dispute, the **P**party that initiated the **e**Dispute must pay the other **P**party's costs.

3. **Inter-**P**party working group**

- 3.1 In the first instance the Access Seeker and the Access Provider should attempt to resolve the ~~Access~~-Dispute between themselves.
- 3.2 ~~An-The~~ Access Provider and the Access Seeker shall establish a working group, or working groups, to fulfil the requirements of subsection 3.1. The working group shall be comprised of representatives of the **P**parties, and be headed by a person who holds a position that is at least equivalent to the head of the Access Provider's Wholesale or Interconnection Group.
- 3.3 The Access Provider shall provide for:
 - (a) subject areas to be dealt with by each working group;
 - (b) equal representation by the Access Seeker and the Access Provider;
 - (c) chairmanship and administrative functions of the working group to be shared equally; and
 - (d) formal notification procedures to the working group.

3.4 The Access Provider and the Access Seeker shall use reasonable endeavours to attempt to settle ~~an the access-d~~Dispute in the working group ~~context~~ for a period of no longer than forty five (45) days unless otherwise agreed by the parties, subject always to a Pparty's right to seek urgent interlocutory relief.

4. Interconnect steering group

4.1 In the event that the parties cannot resolve the ~~d~~Dispute between themselves within the time specified in subsection 3.4, or after any agreed time extension has expired, either Pparty may give ten (10) Business Days' written notice (~~Notice-Period~~) to the other Pparty stating its intention to escalate the issue and outlining the details of the issue. If the issue is not resolved prior to the expiry of the ~~Notice-Period~~, then either Pparty may notify the other Pparty (**Receiving Party**) that it wishes to refer the issue to the Interconnect Steering Group (**ISG**).

4.2 In the event that a dispute is referred to an ISG under ~~clause-subsection~~ 4.1, the Pparties shall promptly form a committee comprising the ISG with an equal number of appropriate representatives from each Pparty.

4.3 The ISG to which an issue has been raised will meet within ten (10) Business Days of the receipt by the Receiving Party of ~~a-the N~~notice under ~~clause subsection~~ 4.1. If the ISG fails to meet or has not been formed within ten (10) Business Days of the receipt by the ~~Receivewwing~~ Receiving Party of ~~a-the N~~notice ~~of a dispute~~, either Pparty may refer the ~~d~~Dispute:

(a) to the extent the issues in dispute are technical in nature, to a Technical Expert (in accordance with ~~clause-section~~ 5); or

(b) to the Commission for arbitration.

4.4 If the ISG has not resolved ~~a-the d~~Dispute within twenty (20) Business Days after it first meets to review that ~~d~~Dispute under ~~clause-subsection~~ 4.3, either Pparty may refer the Dispute:

(a) to the extent the issues in dispute are refer any technical in nature, dispute to a Technical Expert (in accordance with section 5) ~~of this Annexure~~; or

(b) refer the dispute to the Commission for final arbitration.

5. Use of a Technical Expert

- 5.1 A dispute will only be referred to a Technical Expert if the provisions of section 4 have been complied with.
- 5.2 Once a dispute is referred to a Technical Expert, it may not be referred back to a ~~W~~orking ~~g~~roup or ISG.
- 5.3 The ~~person~~Technical Expert to whom a technical dispute may be referred under this section 5:
- (a) will be an expert appointed by agreement of the ~~P~~arties or, if the parties cannot agree, by the Commission;
 - (b) will have the appropriate qualifications and experience to arbitrate the dispute, including knowledge of the communications industry;
 - (c) need not be a Malaysian citizen or resident; and
 - (d) will not be an officer, director, or employee of a communications company or otherwise have a potential for conflict of interest.

(Technical Expert).

- 5.4 If the ~~P~~arties fail to appoint a Technical Expert within ten (10) Business Days ~~of notice~~ of the need to refer a ~~e~~Dispute to a Technical Expert, a Technical Expert will be appointed by the Commission.
- 5.5 When relying on the services of a Technical Expert, the following procedure will apply to the dispute resolution procedure of the Technical Expert:
- (a) the ~~P~~arties will present written submissions to the Technical Expert and each other within fifteen (15) Business Days of the appointment of the Technical Expert; and
 - (b) each ~~P~~arty may respond to the other ~~P~~arty's submission in writing within fifteen (15) Business Days from the date of the other ~~P~~arty's submission.
- 5.6 At the request of either ~~P~~arty and subject to the ~~P~~arties agreeing, or the Technical Expert deciding within five (5) Business Days of the last written

submission, that the ~~use of arbitration by~~ the Technical Expert should be by documents only, a Technical Expert hearing will be held within fifteen (15) Business Days of the last written submission.

- 5.7 Should a Technical Expert ~~dispute resolution procedure~~ hearing be held, each Pparty will have the opportunity of making an oral submission. This process will be conducted in private.
- 5.8 The procedure for hearing technical disputes will be determined by the Technical Expert (including number and duration of oral submissions by the Pparties) but in any case, the Technical Expert's hearing will last no longer than three (3) Business Days.
- 5.9 The Technical Expert will not have the power to appoint any other experts.
- 5.10 The Technical Expert will deliver his or her award within fifteen (15) Business Days of the hearing or of the last written submission where the arbitration is by documents only.
- 5.11 Every eDispute referred to a Technical Expert will be considered separately so that time limits for each dispute are complied with.
- 5.12 The Technical Expert's decision will be binding on the Pparties (in the absence of manifest error of fact or law).

6. Billing Dispute resolution

- 6.1 As outlined in the billing provisions of the Standard at subsection 5.14, a Pparty (**the Invoicing Party**) shall provide to the other Pparty (**the Invoiced Party**) an Invoice in writing, or in such electronic form as may be agreed from time to time, for amounts due in respect of the supply of Facilities and Sservices during such Billing Period.
- 6.2 An Invoicing Party shall allow an Invoiced Party to dispute an Invoice prepared by the Invoicing Party if:
 - (a) in the case of domestic calls and interconnection, the Invoiced Party notifies the Invoicing Party within forty-five (45) days after the date of receipt of such Invoice;

- (b) in the case of outgoing and incoming international calls and interconnection, the Invoiced Party notifies the Invoicing Party within six (6) months after the date of receipt of such Invoice; and
- (c) in case of any other Facilities and Services, the Access Seeker notifies the Access Provider within forty-five (45) days after the date of receipt of such invoice.

6.3 A Billing Dispute may only arise where the Invoiced Party has reasonable grounds to believe that an error has arisen from one of the following circumstances:

- (a) the Invoicing Party's Billing System is, or has been, defective or inaccurate in respect of the recording of the calls which are the subject of the ~~e~~Dispute;
- (b) there is, or has been, a discrepancy between the Invoice in dispute and the records generated by the Invoiced Party's Billing System;
- (c) there is, or has been, a fraud perpetrated by the Invoicing Party; or
- (d) the Invoicing Party has made some other error in respect of the recording of the calls or calculation of the ~~C~~Charges which are the subject of the Billing Dispute.

6.4 A Billing Dispute Notice given under this section 6 must specify:

- (a) the reasons for which ~~the Invoiced Party disputes~~ the Invoice is disputed;
- (b) the amount in dispute;
- (c) details required to identify the relevant Invoice and charges in dispute including:
 - (i) the account number;
 - (ii) the Invoice reference number;
 - (iii) the Invoice date;

- (iv) the Invoice amount; and
 - (v) billing verification information; ~~and-~~
 - (d) evidence in the form of ~~the Invoiced Party's outgoing a~~ report, indicating the relevant traffic data which is in dispute.
- 6.5 The Invoiced Party may withhold payment of amounts disputed in good faith in accordance with subsection 5.14.11 of the Standard. If the Billing dDispute is resolved against the Invoiced Party, that Party shall be required to pay interest at the rate specified in subsection 5.14.15 of the Standard on the amount payable.
- 6.6 Where the Invoiced Party has paid an amount and subsequently notifies the Invoicing Party of a Billing Dispute in relation to that amount within the Billing Dispute Notification Period, the Invoicing Party is not obliged to refund any or all of that amount until the Billing Dispute is resolved in respect of that amount. Once the Billing Dispute is resolved, if the Invoicing Party is obliged to refund an amount to the Invoiced Party, interest will be payable on the refunded amount at the rate specified in subsection 5.14.15 of the Standard. In such circumstances, interest will be payable from the date the Invoiced Party paid the disputed amount to the date of the refund by the Invoicing Party.
- 6.7 The Pparties agree to use their reasonable endeavours to promptly resolve any Billing Dispute notified under this section 6.
- 6.8 If the Pparties are unable to resolve any Billing Dispute within thirty (30) days (or such other period as the Pparties may agree) from the date on which the Billing Dispute Notice is received, either Pparty may seek the consent of the other Pparty to extend the period for resolution of the Billing Dispute stating the exceptional reasons for such extension. The other Pparty is, however, under no obligation to agree to such extension.
- 6.9 To the extent that a Billing Dispute notified under this section involves a Billing Dispute with an international correspondent of the Invoicing Party, the Dispute Resolution Procedures shall be suspended for a reasonable period of time pending resolution of the Billing dDispute with that international correspondent. As a general rule, the period of suspension will not exceed one-hundred and twenty (120) days ~~(120)~~. However, the Pparties shall recognise that some Billing Disputes with international correspondents may take longer to resolve,

in which case the Invoicing Party must promptly inform the Invoiced Party of the likely period required for resolution.

- 6.10 Once the ~~N~~egotiation ~~P~~eriod under subsection 6.8 and (including any extension granted agreed) and any suspension period under subsection 6.9 ~~has~~ have expired, the Billing Dispute may be referred by the Invoiced Party to the procedure described in subsection 6.11 (**Billing Dispute Escalation Procedure**).
- 6.11 The Invoiced Party may refer a Billing Dispute to the Billing Dispute Escalation Procedure under this subsection 6.11 by notifying the Invoicing Party's Billing Representative. Each of the ~~P~~arties shall then appoint a designated representative ~~that who~~ has authority to settle the Billing Dispute, and ~~that who~~ is at a higher level of management than the persons with direct responsibility for administration of this Standard. The designated representatives shall meet as often as they reasonably deem necessary ~~in Order~~ to discuss the Billing Dispute and negotiate in good faith in an effort to resolve such Billing Dispute. The specific format for such discussions will be left to the discretion of the designated representatives, however all reasonable requests for relevant information made by one ~~p~~Party to the other ~~P~~party shall be honoured.
- 6.12 Once any Billing Dispute has been resolved to the ~~P~~parties' satisfaction, any sum to be paid or repaid shall be paid by the relevant ~~P~~party within 14 days from the date of resolution of the Billing Dispute.
- 6.13 Although it ~~shall be~~is the good faith intention of the ~~P~~parties to use the above Billing Dispute Resolution Procedures to the fullest extent to try to solve Billing Disputes, nothing in this Annexure shall prevent either ~~P~~party from pursuing any other remedy in law or equity that may be available to them if a Billing Dispute cannot be resolved to their satisfaction.
- 6.14 A ~~P~~party may request a joint investigation of Invoice discrepancies after that ~~P~~party has conducted a comprehensive internal investigation, including an examination of its own Billing System. Prior to commencement of the joint investigation, the ~~P~~parties must agree on the terms of the joint investigation, including:
- (a) the scope of the joint investigation;
 - (b) how the joint investigation will be conducted; and

- (c) the date by which the joint investigation must be concluded.

The joint investigation may include the generation of test calls to the other Pparty's Network.

- 6.15 Enquiries relating to billing, collecting and settlement arrangements or in relation to Network and operation issues may be directed to the Billing Representatives nominated by each Pparty.
- 6.16 Either pParty may at any time nominate another Billing Representative, provided that ten (10) Business Days prior notification of such appointment is given.
- 6.17 If the pParties are unable to resolve any Billing Dispute within thirty (30) Days from any extended date as might be agreed upon under subsection 6.8, or if they are unable to agree any such extension, either pParty may refer the Billing Dispute to the Commission for resolution under Chapter 7 of Part V of the Act.

7. Definitions

~~7.18~~ In ~~the~~ Dispute Resolution Procedures set out in this Annexure A section 6:

- (a) **“Billing Dispute”** means the dispute of an Invoice ~~issued~~prepared by ~~one a~~ Pparty to the other Pparty, which is made in good faith;
- (b) **“Billing Dispute Notice”** means the written notification made by ~~one a~~ Pparty to the other pParty in relation to a Billing Dispute in accordance with subsection 6.~~42~~;
- (c) **“Billing Dispute Notification Period”** means the period after the date of receipt of an Invoice during which a Billing Dispute may be raised in relation to that Invoice, as specified~~described~~ in subsection 6.2;
- (d) **“Billing Representative”** means a representative of the Pparty appointed in accordance with the billing procedures set out in subsection 6.15; and
- (e) **“Billing System”** means a system to issue Invoices relating to charges payable by each Pparty under ~~the relevant~~ Access Agreement;
- (f) **“Dispute”** has the meaning given to it in subsection 1.1;

- (g) **“Notice”** means the notice issued of intention to escalate the issue to the Interconnect Steering Group, as specified in subsection 4.1; and
- (h) **“Technical Expert”** has the meaning given to it in subsection 5.3.

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7.8. Transitional and Savings

The Commission Determination on the Mandatory Standard on Access, Determination No. 2 of ~~20052003~~ as varied by the Variation to Commission Determination on the Mandatory Standard on Access (Determination No. 2 of 2005), Determination No. 2 of 2009, shall remain in force for the purpose of and application to access agreements registered with the Commission before ~~[dd] [MM] 2016~~ July 2005.

Made: [dd] [MM] 2016

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