

**CHAPTER 18**  
**TELECOMMUNICATIONS**

**Article 18.1: Definitions**

For the purposes of this Chapter:

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

**dialing parity** means the ability of an end-user to use an equal number of digits to access a particular public telecommunications service, regardless of which public telecommunications services supplier the end-user chooses;

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

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

**essential facilities** means facilities of a public telecommunications network or service that:

- (a) are exclusively or predominantly provided by a single or limited number of suppliers; and
- (b) cannot feasibly be economically, or technically substituted in order to supply a service;

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

**leased circuit** means a telecommunications facility between two or more designated points that is set aside for the dedicated use of, or availability to, a user and supplied by a supplier of a fixed telecommunications service;

**license** means any authorization that a Party may require of a person, in accordance with its laws and regulations, in order for that person to offer a telecommunications service, including concessions, permits or registrations;

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

market for public telecommunications services as a result of:

- (a) control over essential facilities; or
- (b) use of its position in the market<sup>1</sup>

**mobile service** means a public telecommunications service supplied through mobile wireless means;

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

**non-discriminatory** means according treatment no less favorable than that accorded to another user of like public telecommunications services in like circumstances, including with respect to timeliness;

**number portability** means the ability of an end-user of public telecommunications services to retain the same telephone numbers when switching between suppliers of public telecommunications services;

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

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

**public telecommunications service** means a telecommunications service that a Party requires, explicitly or in effect, to be offered to the public generally that typically involves the transmission of customer-supplied information between two or more points without an end-to-end change in the form or content of the customer's information. This service may include telephone and data transmission;

**reference interconnection offer** means an interconnection offer extended by a major supplier and filed with, approved by or determined by a telecommunications regulatory body that sufficiently details the terms, rates, and conditions for interconnection so that a supplier of a public telecommunications service that is willing to accept it may obtain interconnection with the major supplier on that basis, without having to engage in negotiations with the major supplier concerned;

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<sup>1</sup> For Mexico, a major supplier includes a preponderant economic agent deemed as such by virtue of its national share in the supply of telecommunication services, when it directly or indirectly holds more than fifty percent national share. This percentage shall be measured either by the number of users, subscribers, traffic on their networks or the utilized capacity of said networks, according to the information held by the Federal Telecommunications Institute.

**roaming service** means a mobile service provided pursuant to an agreement between suppliers of public telecommunications services that enables an end-user to use their mobile handset or other device for voice, data, or messaging services while outside the home public telecommunications network of the mobile handset or other device;

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

**telecommunications regulatory body** means a body or bodies responsible for the regulation of telecommunications;

**user** means a service consumer or a service supplier;

**value-added service** means a telecommunications service employing a computer processing application that:

- (a) acts on the format, content, code, protocol or similar aspects of a customer's transmitted information;
- (b) provides a customer with additional, different or restructured information; or
- (c) involves customer interaction with stored information; and

**virtual co-location** means an arrangement whereby a requesting supplier that seeks co-location may specify equipment to be used in the premises of a major supplier but does not obtain physical access to those premises and allows the major supplier to install, maintain, and repair that equipment.

## **Article 18.2: Scope**

1. This Chapter applies to a measure affecting trade in telecommunications services, including:

- (a) a measure relating to access to and use of public telecommunications networks or services;
- (b) a measure relating to obligations of suppliers of public telecommunications services;
- (c) a measure relating to the supply of value-added services; and
- (d) any other measure relating to public telecommunications networks or services.

2. This Chapter does not apply to a measure relating to broadcast or cable distribution of radio or television programming, except to ensure that an enterprise operating a broadcast station or cable system has continued access to and use of public telecommunications networks and services, as provided under Article 18.3 (Access and Use).<sup>2</sup>
3. Nothing in this Chapter shall be construed to require a Party:
  - (a) to establish, construct, acquire, lease, operate, or provide a telecommunications network or service not offered to the public generally, or require a Party to compel an enterprise to do so; or
  - (b) to compel an enterprise exclusively engaged in the broadcast or cable distribution of radio or television programming to make available its broadcast or cable facilities as a public telecommunications network.
4. Annex 18-A (Rural Telephone Suppliers) includes additional provisions relating to the scope of this Chapter.

### **Article 18.3: Access and Use**

1. Each Party shall ensure that any enterprise of another Party has access to and use of any public telecommunications network or service, including leased circuits, offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions. This obligation shall be applied, *inter alia*, to paragraphs 2 through 6.<sup>3</sup>
2. Each Party shall ensure that any enterprise of another Party is permitted to:
  - (a) purchase or lease, and attach terminal or other equipment that interfaces with a public telecommunications network;
  - (b) provide services to individual or multiple end-users over leased or owned circuits;
  - (c) connect leased or owned circuits with public telecommunications networks and services or with circuits leased or owned by another enterprise;
  - (d) perform switching, signaling, processing, and conversion functions; and

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<sup>2</sup> For greater certainty, to the extent that a services supplier engaged in the broadcast or cable distribution of radio or television programming is also engaged in the supply of public telecommunications services, measures relating to the supply of those public telecommunications by that services supplier are covered by this Chapter.

<sup>3</sup> For greater certainty, this Article does not prohibit any Party from requiring an enterprise to obtain a license to supply a public telecommunications service within its territory.

- (e) use operating protocols of its choice.
3. Each Party shall ensure that any enterprise of another Party may use public telecommunications networks or services for the movement of information in its territory or across its borders, including for intra-corporate communications, and to access information contained in databases or otherwise stored in machine-readable form in the territory of a Party.
4. Notwithstanding paragraph 3, a Party may take measures necessary to ensure the security and confidentiality of messages or to protect the privacy of personal data of end-users of public telecommunications networks or services, provided that those measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or disguised restriction on trade in services.
5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks and services, other than as necessary to:
- (a) safeguard the public service responsibilities of suppliers of public telecommunications networks and services, in particular their ability to make their networks or services available to the public generally; or
  - (b) protect the technical integrity of public telecommunications networks or services.
6. Provided that the conditions for access to and use of public telecommunications networks and services satisfy the criteria set out in paragraph 5, those conditions may include:
- (a) a requirement to use a specified technical interface, including an interface protocol, for connection with those networks or services;
  - (b) a requirement, if necessary, for the interoperability of those networks and services;
  - (c) type approval of terminal or other equipment that interfaces with the network and technical requirements relating to the attachment of that equipment to those networks; and
  - (d) notification, registration, and licensing which, if adopted or maintained, is transparent and provides for processing applications filed thereunder in accordance with a Party's laws or regulations.

## **Article 18.4: Obligations Relating to Suppliers of Public Telecommunications Services**

### *Interconnection*

1. Each Party shall ensure that a supplier of public telecommunications services in its territory provides, directly or indirectly within its territory, interconnection with a supplier of public telecommunications services of another Party.
2. Each Party shall provide its telecommunications regulatory body with the authority to require interconnection at reasonable rates.
3. Further to paragraph 1, each Party shall ensure that a supplier of public telecommunications services in its territory takes reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end-users of public telecommunications services obtained as a result of interconnection arrangements and only uses that information for the purpose of providing these services.

### *Resale*

4. No Party shall prohibit the resale of a public telecommunications service.

### *Roaming*

5. No Party shall prohibit a supplier of public telecommunications services from entering into an agreement to provide roaming services, including an agreement to provide roaming services to devices that is not limited to a transient presence in a Party's territory.

### *Number Portability*

6. Each Party shall ensure that a supplier of public telecommunications services in its territory provides number portability without impairment to quality and reliability, on a timely basis, and on reasonable and non-discriminatory terms and conditions.<sup>4</sup>

### *Dialing Parity*

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<sup>4</sup> With respect to Mexico, this obligation shall apply only to end-users switching suppliers within the same category of service until such time as Mexico determines, pursuant to periodic review, that it is economically and technically feasible to implement number portability without that restriction. With respect to the United States and Canada, this obligation is limited to the ability of end-users to retain at the same location the same telephone numbers, until such time as the Party determines, pursuant to periodic review, that it is economically and technically feasible to implement number portability without that restriction in its territory.

7. Each Party shall ensure that a supplier of public telecommunications services in its territory provides dialing parity within the same category of service to suppliers of public telecommunications services of another Party.<sup>5</sup>

#### *Access to Numbers*

8. Each Party shall ensure that a supplier of public telecommunications services of another Party established in its territory is afforded access to telephone numbers on a non-discriminatory basis.

### **Article 18.5: Treatment by Major Suppliers of Public Telecommunications Services**

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

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

### **Article 18.6: Competitive Safeguards**

1. Each Party shall maintain appropriate measures for the purpose of preventing suppliers of public telecommunications services that, alone or together, are a major supplier in its territory from engaging in or continuing anti-competitive practices.<sup>6</sup>

2. The anti-competitive practices referred to in paragraph 1 include in particular:

- (a) engaging in anti-competitive cross-subsidization;

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<sup>5</sup> For greater certainty, this paragraph shall not be construed to apply to pre-subscribed long distance service.

<sup>6</sup> Mexico reaffirms the principles underlying the Decree amending and supplementing certain provisions of the Articles 6, 7, 27, 28, 73, 78, 94 and 105 of Mexico's Constitution (*Constitución Política de los Estados Unidos Mexicanos*), in telecommunications, *Diario Oficial de la Federación*, June 11, 2013 and, as set out therein, shall impose on a major supplier the necessary measures to prevent impairment of competition. For Mexico, any changes to the measures concerning the rates, terms, and conditions of access to and use of the networks, facilities, and services of a major supplier shall be consistent with the objective of advancing effective competition and preventing monopolistic practices and shall not impair the conditions of competition in the corresponding market.

- (b) using information obtained from competitors with anti-competitive results; and
- (c) not making available, on a timely basis, to suppliers of public telecommunications services, technical information about essential facilities and commercially relevant information that are necessary for them to provide services.

#### **Article 18.7: Resale<sup>7</sup>**

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

#### **Article 18.8: Unbundling of Network Elements**

Each Party shall provide its telecommunications regulatory body with the authority to require a major supplier in its territory to offer public telecommunications service suppliers access to network elements on an unbundled basis on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent for the supply of public telecommunications services. A Party may determine, in accordance with its laws and regulations, the network elements required to be made available in its territory, and the suppliers that may obtain those elements.

#### **Article 18.9: Interconnection with Major Suppliers**

##### *General Terms and Conditions*

1. Each Party shall ensure that a major supplier in its territory provides interconnection for the facilities and equipment of suppliers of public telecommunications services of another Party:
  - (a) at any technically feasible point in the major supplier's network;
  - (b) under non-discriminatory terms, conditions (including technical standards and specifications), and rates;
  - (c) of a quality no less favorable than that provided by the major supplier for its own like services, for like services of non-affiliated service suppliers, or for its subsidiaries or other affiliates;

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<sup>7</sup> For the purposes of this Article, a supplier of mobile services in a Party's territory is not a major supplier unless a Party determines that the supplier meets the definition of "major supplier" set out in Article 18.1 (Definitions).



- (d) in a timely manner, on terms and conditions (including technical standards and specifications), and at cost-oriented rates, that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the suppliers do not have to pay for network components or facilities that they do not require for the service to be provided; and
- (e) on request, at points in addition to the network termination points made generally available to users, subject to charges that reflect the cost of construction of necessary additional facilities.

*Options for Interconnecting with Major Suppliers*

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

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

3. In addition to the options provided in paragraph 2, each Party shall ensure that suppliers of public telecommunications services of another Party have the opportunity to interconnect their facilities and equipment with those of the major supplier through the negotiation of a new interconnection agreement.

*Public Availability of Interconnection Offers and Agreements*

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

5. Each Party shall provide means for suppliers of another Party to obtain the rates, terms, and conditions necessary for interconnection offered by a major supplier. Those means include, at a minimum, ensuring the public availability of:

- (a) rates, terms and conditions for interconnection with a major supplier set by the telecommunications regulatory body;
- (b) interconnection agreements that are in effect between a major supplier in its territory and other suppliers of public telecommunications services in its territory; and
- (c) any reference interconnection offer.

### **Article 18.10: Provisioning and Pricing of Leased Circuits Services**

1. Each Party shall ensure that a major supplier in its territory provides service suppliers of another Party leased circuits services that are public telecommunications services in a reasonable period of time on terms and conditions, and at rates, that are reasonable and non-discriminatory, and based on a generally available offer.
2. Further to paragraph 1, each Party shall provide its telecommunications regulatory body with the authority to require a major supplier in its territory to offer leased circuits services that are public telecommunications services to service suppliers of another Party at capacity-based, cost-oriented prices.

### **Article 18.11: Co-Location<sup>8</sup>**

1. Subject to paragraphs 2 and 3, each Party shall ensure that a major supplier in its territory provides to suppliers of public telecommunications services of another Party in the Party's territory physical co-location of equipment necessary for interconnection or access to unbundled network elements based on a generally available offer, on a timely basis, and on terms and conditions and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent.
2. Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall ensure that a major supplier in its territory provides an alternative solution, such as virtual co-location or some other arrangement that facilitates interconnection or access to unbundled network elements, based on a generally available offer, on a timely basis, and on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent.
3. A Party may determine, in accordance with its laws and regulations, which premises owned or controlled by major suppliers in its territory are subject to paragraphs 1 and 2. If a Party makes this determination, it shall take into account factors such as the state of competition in the market where co-location is required, whether those premises can be substituted in an economically or technically feasible manner in order to provide a competing service, or other specified public interest factors.
4. Even if a Party does not require that a major supplier offer co-location at certain premises, it shall allow a service supplier to request that those premises be offered for co-location consistent with paragraph 1, without prejudice to the Party's decision on that request.

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<sup>8</sup> For the purposes of this Article, a supplier of mobile services in a Party's territory is not a major supplier unless a Party determines that the supplier meets the definition of "major supplier" set out in Article 18.1 (Definitions).

### **Article 18.12: Access to Poles, Ducts, Conduits, and Rights-of-Way<sup>9</sup>**

Each Party shall ensure that a major supplier in its territory provides access, subject to technical feasibility, to poles, ducts, conduits, rights-of-way, and any other structures as determined by the Party, owned or controlled by the major supplier, to suppliers of public telecommunications services of another Party in the Party's territory on a timely basis, on terms and conditions and at rates, that are reasonable, non-discriminatory, and transparent.

### **Article 18.13: Submarine Cable Systems**

Each Party shall ensure that a major supplier that controls international submarine cable landing stations in the Party's territory for which there are no economically or technically feasible alternatives provides access to those landing stations consistent with Article 18.9 (Interconnection with Major Suppliers), Article 18.10 (Provisioning and Pricing of Leased Circuits Services), and Article 18.11 (Co-Location), to public telecommunications suppliers of another Party.<sup>10</sup>

### **Article 18.14: Conditions for the Supply of Value-Added Services<sup>11</sup>**

1. The Parties recognize the importance of value-added services to innovation, competition, and consumer welfare. If a Party engages in direct regulation of value-added services, it should not impose on a supplier of value-added services requirements applicable to a supplier of public telecommunications services without due consideration of the legitimate public policy objectives, the technical feasibility of the requirements, and the characteristics of the value-added services at issue.

2. Further to paragraph 1, each Party shall:

(a) ensure that:

(i) any licensing, permit, registration, or notification procedure that it adopts or maintains relating to the supply of value-added services is transparent and non-discriminatory, and that applications filed thereunder are processed

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<sup>9</sup> For the purposes of this Article, a supplier of mobile services in a Party's territory is not a major supplier unless a Party determines that the supplier meets the definition of "major supplier" set out in Article 18.1 (Definitions).

<sup>10</sup> Mexico, based on its evaluation of the state of competition of the Mexican submarine cable systems market, has not applied major supplier-related measures to submarine cable landing stations pursuant to this Article.

<sup>11</sup> For greater certainty, this Article should not be understood to reflect a Party's view on whether a service should be categorized as a value-added service or a public telecommunications service.

expeditiously, and

- (ii) information required under that procedure is limited to that necessary to demonstrate that the applicant has the financial solvency to begin providing services or to assess conformity of the applicant's terminal or other equipment with the Party's applicable standards or technical regulations, and
- (b) not require an enterprise in its territory that supplies value-added services to:
- (i) supply those services to the public generally,
  - (ii) cost-justify its rates for those services,
  - (iii) file a tariff for those services,
  - (iv) connect its networks with a particular customer or network for the supply of those services or
  - (v) conform with a particular standard or technical regulation of the telecommunications regulatory body for connecting to any other network, other than a public telecommunications network.

3. Notwithstanding paragraphs 2(a)(ii) and 2(b), a Party may take the actions described in paragraphs 2(a)(ii) and 2(b) to remedy a practice of a supplier of value-added services that the Party has found in a particular case to be anticompetitive under its law, or to otherwise promote competition or safeguard the interests of consumers.

#### **Article 18.15: Flexibility in the Choice of Technology**

1. No Party shall prevent a supplier of public telecommunications services from choosing the technologies it wishes to use to supply its services, subject to requirements necessary to satisfy legitimate public policy interests, provided that any measure restricting that choice is not prepared, adopted, or applied in a manner that creates an unnecessary obstacle to trade.

2. For greater certainty, if a Party adopts a measure restricting choice referred to in paragraph 1, it shall do so consistent with Article 18.24 (Transparency).

#### **Article 18.16: Approaches to Regulation**

1. The Parties recognize the value of competitive markets to deliver a wide choice in the supply of telecommunications services and to enhance consumer welfare, and that economic

regulation may not be needed if there is effective competition or if a service is new to a market. Accordingly, the Parties recognize that regulatory needs and approaches differ by market, and that each Party may determine how to implement its obligations under this Chapter.

2. In this respect, the Parties recognize that a Party may:
  - (a) engage in direct regulation either in anticipation of an issue that the Party expects may arise or to resolve an issue that has arisen in the market;
  - (b) rely on the role of market forces, particularly with respect to market segments that are, or are likely to be, competitive or that have low barriers to entry, such as services provided by telecommunications suppliers that do not own network facilities;<sup>12</sup> or
  - (c) use other appropriate means that benefit the long-term interest of end-users.
3. If a Party engages in direct regulation, it may nonetheless forbear, to the extent provided for in its law, from applying that regulation to a service that the Party classifies as a public telecommunications service, if its telecommunications regulatory body determines that:
  - (a) enforcement of the regulation is not necessary to prevent unreasonable or discriminatory practices;
  - (b) enforcement of the regulation is not necessary for the protection of consumers; and
  - (c) forbearance is consistent with the public interest, including promoting and enhancing competition between suppliers of public telecommunications services.

#### **Article 18.17: Telecommunications Regulatory Bodies**

1. Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, a supplier of public telecommunications services. With a view to ensuring the independence and impartiality of telecommunications regulatory bodies, each Party shall ensure

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<sup>12</sup> Consistent with this subparagraph, the United States, based on its evaluation of the state of competition of the U.S. commercial mobile market, has not applied major supplier-related measures pursuant to Article 18.5 (Treatment by Major Suppliers of Public Telecommunications Services), Article 18.7 (Resale), Article 18.9 (Interconnection with Major Suppliers), Article 18.11 (Co-Location), or Article 18.12 (Access to Poles, Ducts, Conduits, and Rights-of Way) to the commercial mobile market.

that its telecommunications regulatory body does not hold a financial interest<sup>13</sup> or maintain an operating or management role in a supplier of public telecommunications services.<sup>14</sup>

2. Each Party shall ensure that its regulatory decisions and procedures, including decisions and procedures relating to licensing, interconnection with public telecommunications networks and services, tariffs, and assignment or allocation of spectrum for commercial telecommunications services, are impartial with respect to market participants.

3. Each Party shall ensure that its telecommunications regulatory body has the authority to impose requirements on a major supplier that are additional to or different from requirements imposed on other suppliers in the telecommunications sector.

#### **Article 18.18: State Enterprises**

No Party shall accord more favorable treatment to a supplier of telecommunications services in its territory than that accorded to a like service supplier of another Party on the basis that the supplier receiving more favorable treatment is owned or controlled by the central level of government of the Party.

#### **Article 18.19: Universal Services**

Each Party has the right to define the kind of universal service obligation it wishes to maintain. Each Party shall administer any universal service obligation that it maintains in a transparent, non-discriminatory, and competitively neutral manner and shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined.

#### **Article 18.20: Licensing Process**

1. If a Party requires a supplier of public telecommunications services to have a license, the Party shall make publicly available:

- (a) applicable licensing criteria and procedures;

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<sup>13</sup> For greater certainty, this paragraph shall not be construed to prohibit a government entity of a Party other than the telecommunications regulatory body from owning equity in a supplier of public telecommunications services.

<sup>14</sup> For Mexico, the telecommunications regulatory body is autonomous from the Executive Branch of government, is independent regarding its decisions and functioning, and has the purpose of regulating and promoting competition and efficient development of telecommunications, as set out in existing Mexican law.

- (b) the period that it normally requires to reach a decision concerning an application for a license; and
  - (c) the terms and conditions of licenses in effect.
2. Each Party shall ensure that, on request, an applicant or licensee receives the reasons for the:
- (a) denial of a license;
  - (b) imposition of supplier-specific conditions on a license;
  - (c) revocation of a license; or
  - (d) refusal to renew a license.

#### **Article 18.21: Allocation and Use of Scarce Resources**

1. Each Party shall administer its procedures for the allocation and use of scarce telecommunications resources, including frequencies, numbers and rights-of-way, in an objective, timely, transparent, and non-discriminatory manner.
2. Each Party shall make publicly available the current state of frequency bands allocated and assigned to specific suppliers but retains the right not to provide detailed identification of frequencies that are allocated or assigned for specific government uses.
3. For greater certainty, a measure of a Party that allocates or assigns spectrum or manages frequency is not in itself inconsistent with Article 15.5 (Market Access) either as it applies to cross-border trade in services or through the operation of Article 15.2 (Scope) to an investor or covered investment of another Party. Accordingly, each Party retains the right to establish and apply spectrum and frequency management policies that may have the effect of limiting the number of suppliers of public telecommunications services, provided that the Party does so in a manner that is consistent with this Agreement. This includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.
4. When making a spectrum allocation for commercial telecommunications services, each Party shall endeavor to rely on an open and transparent process that considers the public interest, including the promotion of competition.
5. Each Party shall endeavor to rely generally on market-based approaches in assigning spectrum for terrestrial commercial telecommunications services. To this end, each Party may use mechanisms such as auctions, if appropriate, to assign spectrum for commercial use.

## **Article 18.22: Enforcement**

Each Party shall provide its competent authority the authority to enforce the Party's measures relating to the obligations set out in Article 18.3 (Access and Use), Article 18.4 (Obligations Relating to Suppliers of Public Telecommunications Services), Article 18.5 (Treatment by Major Suppliers of Public Telecommunications Services), Article 18.6 (Competitive Safeguards), Article 18.7 (Resale), Article 18.8 (Unbundling of Network Elements), Article 18.9 (Interconnection with Major Suppliers), Article 18.10 (Provisioning and Pricing of Leased Circuits Services), Article 18.11 (Co-Location), Article 18.12 (Access to Poles, Ducts, Conduits, and Rights-of-Way) and Article 18.13 (Submarine Cable Systems). That authority shall include the ability to impose effective sanctions, which may include financial penalties, injunctive relief (on an interim or final basis), corrective orders, or the modification, suspension, or revocation of licenses.

## **Article 18.23: Resolution of Disputes**

1. Further to Article 29.3 (Administrative Proceedings) and Article 29.4 (Review and Appeal), each Party shall ensure that:

### *Recourse*

- (a) enterprises have recourse to the telecommunications regulatory body of the Party to resolve disputes with a supplier of public telecommunications services regarding the Party's measures relating to matters set out in Article 18.3 (Access and Use), Article 18.4 (Obligations Relating to Suppliers of Public Telecommunications Services), Article 18.5 (Treatment by Major Suppliers of Public Telecommunications Services), Article 18.6 (Competitive Safeguards), Article 18.7 (Resale), Article 18.8 (Unbundling of Network Elements), Article 18.9 (Interconnection with Major Suppliers), Article 18.10 (Provisioning and Pricing of Leased Circuits Services), Article 18.11 (Co-Location), Article 18.12 (Access to Poles, Ducts, Conduits, and Rights-of-Way), and Article 18.13 (Submarine Cable Systems);
- (b) if the telecommunications regulatory body declines to initiate action on a request to resolve a dispute, it shall, on request, provide a written explanation for its decision within a reasonable period of time;<sup>15</sup>
- (c) a supplier of public telecommunications services of another Party that has requested interconnection with a major supplier in the Party's territory has, within a reasonable and publicly specified period of time after the supplier requests

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<sup>15</sup> For the United States, this subparagraph applies only to the national regulatory body.



interconnection, recourse to its telecommunications regulatory body to resolve disputes regarding the appropriate terms, conditions and rates for interconnection with that major supplier; and

*Reconsideration*<sup>16</sup>

- (d) an enterprise whose legally protected interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may appeal to or petition the body to reconsider that determination or decision. No Party shall permit the making of an application for reconsideration to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body, unless the regulatory body issues an order that the determination or decision not be enforced while the proceeding is pending. A Party may limit the circumstances under which reconsideration is available, in accordance with its laws and regulations.

*Judicial Review*

2. No Party shall permit the making of an application for judicial review to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body, unless the judicial body issues an order that the determination or decision not be enforced while the proceeding is pending.

**Article 18.24: Transparency**

- 1. Further to Article 29.2 (Publication), each Party shall ensure that when its telecommunications regulatory body seeks input<sup>17</sup> for a proposal for a regulation, that body:
  - (a) makes the proposal public or otherwise available to any interested persons;
  - (b) includes an explanation of the purpose of and reasons for the proposal;
  - (c) provides interested persons with adequate public notice of the ability to comment and reasonable opportunity for comment;

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<sup>16</sup> This subparagraph does not apply to Mexico. For Mexico, the general rules, acts or omissions of the Federal Telecommunications Institute may only be challenged through an indirect *amparo* trial before federal courts specialized in competition, broadcasting, and telecommunications and shall not be subject to injunction (*suspensión*).

<sup>17</sup> For greater certainty, seeking input does not include internal governmental deliberations.

- (d) to the extent practicable, makes publicly available all relevant comments filed with it; and
  - (e) responds to all significant and relevant issues raised in comments filed, in the course of issuance of the final regulation.<sup>18</sup>
2. Further to Article 29.2 (Publication), each Party shall ensure that its measures relating to public telecommunications services are publicly available, including:
- (a) tariffs and other terms and conditions of service;
  - (b) specifications of technical interfaces;
  - (c) conditions for attaching terminal or other equipment to the public telecommunications network;
  - (d) licensing, permit, registration, or notification requirements, if any;
  - (e) general procedures relating to resolution of telecommunications disputes provided for in Article 18.23 (Resolution of Disputes); and
  - (f) any measures of the telecommunications regulatory body if the government delegates to other bodies the responsibility for preparing, amending, and adopting standards-related measures affecting access and use.

### **Article 18.25: International Roaming Services**

1. The Parties shall endeavor to cooperate on promoting transparent and reasonable rates for international mobile roaming services that can help promote the growth of trade between the Parties and enhance consumer welfare.
2. A Party may take steps to enhance transparency and competition with respect to international mobile roaming rates and technological alternatives to roaming services, such as:
- (a) ensuring that information regarding retail rates is easily accessible to consumers; and
  - (b) minimizing impediments to the use of technological alternatives to roaming, whereby consumers can access telecommunications services using the device of their choice when visiting the territory of a Party from the territory of another Party.

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<sup>18</sup> For greater certainty, a Party may consolidate its responses to the comments received from interested persons.

### **Article 18.26: Relation to Other Chapters**

If there is an inconsistency between this Chapter and another Chapter of this Agreement, this Chapter shall prevail to the extent of the inconsistency.

### **Article 18.27: Telecommunications Committee**

1. The Parties hereby establish a Telecommunications Committee composed of government representatives of each Party.
2. The Telecommunications Committee shall:
  - (a) review and monitor the implementation and operation of this Chapter, with a view to ensuring the effective implementation of the Chapter by enabling responsiveness to technological and regulatory developments in telecommunications to ensure the continuing relevance of this Chapter to Parties, service suppliers and end-users;
  - (b) discuss issues related to this Chapter and any other issues relevant to the telecommunications sector the Parties may decide;
  - (c) report to the Commission on the findings and the outcomes of its discussions; and
  - (d) carry out other functions delegated to it by the Commission.
3. The Telecommunications Committee shall meet at venues and times as the Parties may decide.
4. The Parties may decide to invite representatives of relevant entities other than the Parties, including representatives of private sector entities, having the necessary expertise relevant to the issues to be discussed, to attend meetings of the Telecommunications Committee.

## **ANNEX 18-A**

### **RURAL TELEPHONE SUPPLIERS**

#### *United States*

The United States may exempt rural local exchange carriers and rural telephone companies, as defined, respectively, in sections 251(f)(2) and 3(44) of the Communications Act of 1934, as amended, (47 U.S.C. Section 251(f)(2) and Section 153(44)), from the obligations contained in Article 18.4.6 (Obligations Relating to Suppliers of Public Telecommunications Services – Number Portability), Article 18.4.7 (Obligations Relating to Suppliers of Public Telecommunications Services – Dialing Parity), Article 18.7 (Resale), Article 18.8 (Unbundling of Network Elements), Article 18.9 (Interconnection with Major Suppliers), and Article 18.11 (Co-Location).