

SCHEDULE 3

PUBLIC UTILITIES COMMISSION

TELECOMMUNICATIONS INTERCONNECTION AND INFRASTRUCTURE SHARING (RATES, FEES AND CHARGES) REGULATIONS (AMENDED), 2010

PART I

INTERPRETATION AND APPLICATION

Short Title.

1. These Regulations may be cited as the “Interconnection and Infrastructure Rates Regulations, 2010”.

Application and Scope.

2. These Regulations shall govern the determination of all rates, fees and charges for interconnection and the sharing of infrastructure and facilities between licensed telecommunications services providers or between licensed telecommunications services providers any other persons or companies or other members of the public where applicable.

Interpretation.

3. (1) In these Regulations, unless the context otherwise requires:

“written direction” means any written instructions given to or any written obligation placed on or written thing required of licensees in relation to any rights and obligations of such licensees in relation to these regulations

(2) A word or phrase not defined in these Regulations but defined in the Public Utilities Commission Act or the Belize Telecommunications Act shall have the meaning assigned to it in such Acts.

PART II

RATEMAKING PRINCIPLES

General principles for determination of rates, fees and charges.

4. (1) Rates, fees and charges for interconnection services and facilities and for infrastructure and facilities sharing shall reflect the public telecommunications services licensee’s costs defined as the incremental cost, and may include allowance for a reasonable return on capital investment.

(2) Differences in rates, fees and charges between different users may only be justified based on cost differences directly attributable to providing interconnection services and facilities and infrastructure and facilities sharing for those users.

Submission of rates, fees and charges for approval.

5. (1) Any rate, fee or charge determined by any licensee subject to the provisions of these regulations shall be submitted to the Commission for approval before such rate, fee or charge shall be effective.

(2) The Commission may allow for the imposition of such reasonable rates, fees and charges under such conditions as it deems appropriate in the event that the Commission is not in possession of all the information duly required for the Commission to make an appropriate assessment of any rates, fees and charges submitted to it for approval. For this purpose, the Commission may reference such costing benchmarks that comport with internationally accepted standards for such benchmarks.

Methodology for the determination of relevant gross annual revenues.

6. The gross annual revenues to be derived by a licensee as a result of the imposition of rates, fees and charges determined in respect of interconnection and infrastructure and facilities sharing shall be expressed arithmetically as follows:

$$\begin{aligned} & \text{OPEX} \\ & + \text{Return} \\ & + \text{Depreciation} \\ & + \text{Taxes/Licence Fees} \\ & - \text{Other Income (OI)} \\ & = \text{Total Service Revenue (TSR);} \end{aligned}$$

where, in the above expression:

(a) **Total Service Revenue (TSR)** represents the relevant gross annual revenues to be derived by a licensee;

(b) **Other Income (OI)** is defined as the sum of other sources of gross annual revenues associated with the implementation of any relevant arrangements between licensees, including any payments received in association with any additional costs required of a licensee as a result of any non-traditional requests related to the implementation of such arrangements.

(c) **Return** is defined as the annual revenue required to allow for a reasonable return on, or to cover the cost of capital associated with, capital investments made by a licensee in association with the implementation of any relevant arrangements with licensees or other persons, and is expressed arithmetically as follows:

$$\text{Return} = \text{CI} \times \text{ROR}$$

where:

- (i) **CI** represents the value of the capital investments made by a licensee in association with the implementation of any relevant arrangements with licensees or other persons;
 - (ii) **ROR** represents the percent (%) rate of return approved by the Commission.
- (d) **Depreciation** is defined as the appropriately allocated annual cost of consumption of any capital investments (**CI**) associated with the implementation of any relevant arrangements between licensees or other persons, and is calculated as the sum of the relevant annual depreciation of the capital investments (**CI**), based on approved depreciation schedules for such capital investments.
- (e) **OPEX** is defined as the annual operational expenditure associated with the implementation or execution of any relevant arrangements between licensees and includes, but is not limited to, the following cost items:
- (i) Recurrent operating and maintenance expenses directly associated with the relevant capital investments (**CI**) and with the relevant arrangements with licensees or other persons;
 - (ii) Recurrent indirect expenses, such as overhead and corporate expenses associated with the relevant capital investments (**CI**) and with the relevant arrangements with licensees or other persons.
- (f) **Taxes/Licence Fees** are defined as the annual taxes and licence fees payable to the Government of Belize or the Public Utilities Commission (PUC), respectively, in respect of revenues associated with the provision of a relevant service or with the implementation or execution of any relevant arrangements between licensees, and are expressed arithmetically as follows:

$$\text{Taxes/Licence Fees} = (\text{TSR} + \text{OI}) \times (\text{TR} + \text{LFR})$$

where:

- (i) **TSR** is the **Total Service Revenue** defined in section 4(a);
- (ii) **OI** is the **Other Income** defined in section 4(b);
- (iii) **TR** represents the legal tax rate, being 24.5% for the time being;
- (iv) **LFR** represents the legal annual licence fee rate where applicable, being 1.5% for the time being.

Methodologies for the determination of relevant rates, fees and charges.

7. (1) Where a licensee is providing an infrastructure and facilities sharing service, the annual rates, fees or charges to be levied for such service shall be determined as the average **TSR**

for the relevant capital investment over the life of the relevant infrastructure or facilities agreement, based on the formula approved by the Commission for the allocation of costs between the licensee and the licensee(s) or person(s) receiving the service.

(2) Where a licensee is providing interconnection services and facilities, the rates, fees or charges to be levied for such services and facilities shall be the average unit cost of service as determined by dividing the estimated total **TSR** for a relevant future period approved by the Commission, by the forecast demand over the relevant future period expressed in the appropriate unit of measure for the service, as approved by the Commission.

(3) For the purposes of paragraph (2) above, the following periods shall apply:

(i) For new agreements, five (5) years;

(ii) For existing agreements, three (3) years;

(iii) Where conditions warrant, such other periods as may be specified by the Commission during the review of any submission made by licensees.

Allocation of costs between licensees and other persons.

8. (1) In the implementation of an infrastructure and facilities sharing service, costs shall be allocated between licensees and other persons by:

(a) comparative usage where such usage may be quantified by a finite and measurable unit of usage

(b) comparative benefit as determined by the Commission, including but not limited to market size, where usage cannot be quantified by a finite and measurable unit of usage

(c) any other reasonable method approved by the Commission, with the mutual agreement of those licensees or persons that are party to any relevant agreement

Rate of return.

9. The percent (%) rate of return (ROR) to be applied in the determination of gross annual revenues to be derived by a licensee as a result of the imposition of rates, fees and charges determined in respect of interconnection and infrastructure and facilities sharing shall be fifteen percent (15%).

PART III

PROCESS FOR APPROVAL OF RATES, FEES AND CHARGES

Process for approval of new or amended rates, fees and charges.

10. Where a licensee proposes to make a new arrangement with another licensee for which these regulations apply, or where a licensee or licensees propose to amend any approved rates, tariffs, fees or charges for which these regulations apply, such licensee or licensees shall submit the proposed rates, tariffs, fees or charges or any proposed amendments, along with

all pertinent information, to the Commission for its consideration at least thirty-five (35) days prior to the proposed introduction of any such new or amended rates, tariffs, fees or charges.

11. A decision to approve or to deny approval of any proposed rates, tariffs, fees or charges submitted to the Commission pursuant to Section (10) above shall be made within twenty-one (21) days of the submission of such proposed rates, tariffs, fees or charges or amendments.
12. Within seven (7) days of any approval given by the Commission pursuant to Section (11) the licensee or licensees shall publish the approved rates, tariffs, fees or charges in a manner best calculated to reach the attention of all interested persons, and the Commission shall serve notice of the approved rates, tariffs, fees or charges for public information and to allow consumers to comment on the reasonableness of the tariffs.
13. The Commission may at any time, require that licensees provide justification for any existing or previously approved rates, tariffs, fees or charges for services or arrangements for which these regulations apply, and may require that such licensees modify or amend any such existing or previously approved rates, tariffs, fees or charges at such time that the Commission may require, where the Commission determines that the existing or previously approved rates, tariffs, fees or charges are no longer justified or no longer conform to the provisions of these regulations.
14. (1) Where a licensee or an interested party files comments or information with the Commission pursuant to Section 10 or Section 12, to the extent such comments or information include statements or information purported to be factual, such comments or information shall be accompanied by a sworn affidavit by the person making the submission or, if an entity makes the submission, by the most qualified officer authorized by that entity.

(2) An affidavit shall state that the factual statements or information provided are true to the best of knowledge and belief of the deponent and that he made the statement knowing that if it were relied upon in the proceedings, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true.
15. (1) The licensee and interested parties may request confidential treatment for any commercially sensitive information submitted pursuant to Section 10 or Section 12.

(2) When filing information it is deemed to be confidential, the licensee or an interested party shall submit a petition for confidential treatment that sets forth the justification for confidential treatment and shall clearly mark the information it deems to be confidential.

(3) Only such information as is commercially sensitive should be marked as confidential and, where only a portion of a document includes confidential information, an expurgated copy shall be filed with the full document.

(4) Confidential information shall be treated confidentially unless, within five (5) days of receipt of the petition and the information marked as confidential, the Commission finds that the information is not commercially sensitive and so notifies the person who submitted the information in writing in which case, the person who submitted the information may withdraw the information by written notice to the Commission within two (2) days of the Commission's findings, instead of having it disclosed; and information so withdrawn shall not be considered by the Commission in making a determination or decision.

(5) No inference may be drawn from the decision of the petitioner to withdraw such information from the consideration of the Commission.

16. A licensee shall comply with any written directions given to him by the Commission in relation to the exercise of his rights and obligations under these Regulations.

Violations.

17. Any contravention of any provisions of these Regulations by any telecommunications services licensee shall constitute a material breach of any conditions of the licence granted to such licensee by the Commission that requires such licensee to comply with the provisions of any Order or Regulations made by the Commission, and shall be punishable under section 48 of the Belize Telecommunications Act or any other relevant law or Act which may provide penalties for violations to these regulations that may also constitute violations to such relevant law or Act.