CHAPTER TWELVE
TELECOMMUNICATIONS

ARTICLE 12.1: SCOPE AND COVERAGE

1. This Chapter applies to measures affecting trade in the telecommunications sector.

2. Except to ensure that enterprises operating broadcast stations and cable systems have continued access to and use of public telecommunications services, this Chapter does not apply to any measure adopted or maintained by a Party relating to broadcast or cable distribution of radio or television programming.

3. Nothing in this Chapter shall be construed to:

   (a) require a Party, or require a Party to compel any enterprise to establish, construct, acquire, lease, operate or provide telecommunications networks or services not offered to the public generally; or

   (b) require a Party to compel any enterprise exclusively engaged in the broadcast or cable distribution of radio or television programming to make available its broadcast or cable facilities as a public telecommunications network.

ARTICLE 12.2: ACCESS TO AND USE OF PUBLIC TELECOMMUNICATIONS SERVICES

1. Each Party shall ensure that service suppliers of the other Party have access to and use of any public telecommunications service, including leased circuits, offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions, including as set out in paragraphs 2 through 4.

2. Each Party shall ensure that service suppliers of the other Party are permitted to:

   (a) purchase or lease, and attach terminal or other equipment that interfaces with a public telecommunications network;

   (b) provide services to individual or multiple end-users over any leased circuit(s);

   (c) connect owned or leased circuits with public telecommunications networks and services in the territory, or across the borders, of that Party or with circuits leased or owned by another service supplier;

   (d) perform switching, signaling, processing and conversion functions; and
(e) use operating protocols of their choice in the supply of any service.

3. Each Party shall ensure that enterprises of the other Party may use public telecommunications services for the movement of information in its territory or across its borders and for access to information contained in databases or otherwise stored in machine-readable form in the territory of either Party.

4. Notwithstanding the preceding paragraph, a Party may take such measures as are necessary to ensure the security and confidentiality of messages subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or disguised restriction on trade in services.

ARTICLE 12.3: OBLIGATIONS RELATING TO SUPPLIERS OF PUBLIC TELECOMMUNICATIONS SERVICES

Interconnection

1. (a) Each Party shall ensure that suppliers of public telecommunications services in its territory provide, directly or indirectly, interconnection with the suppliers of public telecommunications services of the other Party at reasonable rates.

(b) In carrying out subparagraph (a), each Party shall ensure that suppliers of public telecommunications services in its territory take reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end-users of public telecommunications services and only use such information for the purpose of providing those services.

Number Portability

2. Each Party shall ensure that suppliers of public telecommunications services in its territory provide number portability to the extent technically feasible, and on reasonable terms and conditions.

Dialing Parity

---

1 Subject to Annex 12-A.
2 This paragraph shall apply with respect to Bahrain upon a determination by its telecommunications regulatory body that sufficient consumer demand exists for number portability.
3. Each Party shall ensure that suppliers of public telecommunications services in its territory provide dialing parity to suppliers of public telecommunications services of the other Party.3

ARTICLE 12.4: ADDITIONAL OBLIGATIONS RELATING TO MAJOR SUPPLIERS OF PUBLIC TELECOMMUNICATIONS SERVICES4

Treatment by Major Suppliers

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

   (a) the availability, provisioning, rates or quality of like public telecommunications services; and

   (b) the availability of technical interfaces necessary for interconnection.

Competitive Safeguards

2. (a) Each Party shall maintain appropriate measures for the purpose of preventing suppliers who, alone or together, are a major supplier in its territory from engaging in or continuing anti-competitive practices.

   (b) The anti-competitive practices referred to in subparagraph (a) shall include in particular:

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

      (ii) using information obtained from competitors with anti-competitive results; and

      (iii) not making available, on a timely basis, to suppliers of public telecommunications services, technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

3 This paragraph may not apply to commercial mobile services in Bahrain.
4 Subject to Annex 12-B.
Resale

3. Each Party shall ensure that major suppliers in its territory:

   (a) offer for resale, at reasonable rates, to suppliers of public telecommunications services of another Party, public telecommunications services that such major suppliers provide at retail to end-users that are not suppliers of public telecommunications services; and

   (b) do not impose unreasonable or discriminatory conditions or limitations on the resale of such services.6

Unbundling of Network Elements

4. Each Party shall provide its telecommunications regulatory body the authority to require major suppliers in its territory to offer access to network elements on an unbundled basis on terms and conditions and at cost-oriented rates that are reasonable, non-discriminatory and transparent for the supply of public telecommunications services.

Interconnection

5. (a) General Terms and Conditions

   Each Party shall ensure that a major supplier in its territory provides interconnection for the facilities and equipment of suppliers of public telecommunications services of the other Party:

   (i) at any technically feasible point in the major supplier’s network;

   (ii) under non-discriminatory terms, conditions (including technical standards and specifications) and rates;

   (iii) of a quality no less favorable than that provided by such major supplier for its own like services, for like services of non-affiliated service suppliers,

---

5 For purposes of subparagraph (a), wholesale rates set pursuant to a Party’s law and regulations satisfy the standard of reasonableness.

6 Where provided in its law or regulations, a Party may prohibit a reseller that obtains, at wholesale rates, a public telecommunications service available at retail to only a limited category of subscribers from offering the service to a different category of subscribers.
or for its subsidiaries or other affiliates;

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

(v) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

(b) Options for Interconnecting with Major Suppliers

Each Party shall ensure that suppliers of public telecommunications services of the other Party may interconnect their facilities and equipment with those of a major supplier in its territory pursuant to at least one of the following options:

(i) a reference interconnection offer or another standard interconnection offer containing the rates, terms and conditions that the major supplier offers generally to suppliers of public telecommunications services; or

(ii) the terms and conditions of an existing interconnection agreement or through negotiation of a new interconnection agreement.

(c) Public Availability of Interconnection Offers

Each Party shall require a major supplier in its territory to make publicly available a reference interconnection offer or other standard interconnection offer containing the rates, terms and conditions that the major supplier offers generally to suppliers of public telecommunications services.

(d) Public Availability of the Procedures for Interconnection Negotiations

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

(e) Public Availability of Interconnection Agreements Concluded with Major Suppliers

(i) Each Party shall require a major supplier in its territory to file all
interconnection agreements to which they are party with its telecommunications regulatory body, or other relevant body.

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

Provisioning and Pricing of Leased Circuits Services

6. (a) Each Party shall ensure that a major supplier in its territory provides enterprises of the other Party leased circuits services that are public telecommunications services on terms and conditions and at rates that are reasonable and non-discriminatory.

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

Co-location

7. (a) Subject to subparagraphs (b) and (c), each Party shall ensure that a major supplier in its territory provide to suppliers of public telecommunications services of the other Party physical co-location of equipment necessary for interconnection on terms and conditions and at cost-oriented rates that are reasonable, non-discriminatory and transparent.

(b) 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:

(i) provides an alternative solution; or

(ii) facilitates virtual co-location,

on terms and conditions and at cost-oriented rates that are reasonable, non-discriminatory and transparent.

(c) Premises subject to this obligation shall be those determined by each Party’s national law or regulation.

Poles, Ducts, and Conduits
8. Each Party shall ensure that major suppliers in its territory afford access to poles, ducts, and conduits to suppliers of public telecommunications services of the other Party on reasonable and nondiscriminatory rates, terms and conditions.

ARTICLE 12.5: SUBMARINE CABLE SYSTEMS

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

ARTICLE 12.6: CONDITIONS FOR THE PROVISION OF VALUE-ADDED SERVICES

1. Neither Party may require an enterprise in its territory that it classifies as a supplier of value-added services (which supplies such services over facilities that it does not own) to:

   (a) supply such services to the public generally;

   (b) cost-justify rates for such services;

   (c) file a tariff for such services;

   (d) interconnect its networks with any particular customer for the supply of such services; or

   (e) conform with any particular standard or technical regulation for interconnection other than for interconnection to a public telecommunications network.

2. Notwithstanding paragraph 1, a Party may take the actions described in paragraph 1 to remedy a practice of a supplier of value-added services that the Party has found in a particular case to be anti-competitive under its law or regulation, or to otherwise promote competition or safeguard the interests of consumers.

ARTICLE 12.7: INDEPENDENT REGULATORY BODIES AND GOVERNMENT OWNERSHIP

1. Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of public telecommunications services. To this end, each Party shall ensure that its telecommunications regulatory body does not hold a financial interest or maintain an operating role in such a supplier.
2. Each Party shall ensure that the decisions and procedures of its telecommunications regulatory body are impartial with respect to all interested persons. To this end, each Party shall ensure that any financial interest that it holds in a supplier of public telecommunications services does not influence the decisions and procedures of its telecommunications regulatory body.

3. No Party shall accord more favorable treatment to a supplier of public telecommunications service or to a supplier of value-added services in its territory than that accorded to a like supplier of another Party on the basis that the supplier receiving more favorable treatment is owned by the national government of that Party.

4. Each Party shall maintain the absence or eliminate as soon as feasible national government ownership in any supplier of public telecommunications services. Where a Party has such an ownership interest in a supplier of public telecommunications service, it shall notify the other Party of its intention to reduce or eliminate such interest as soon as possible.

ARTICLE 12.8: UNIVERSAL SERVICE

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 12.9: LICENSING PROCESS

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

   (a) all the licensing criteria and procedures;

   (b) the period of time normally required to reach a decision concerning an application for a license; and

   (c) the terms and conditions of all licenses issued.

2. Each Party shall ensure that, upon request, an applicant receives the reasons for the denial of a license.

ARTICLE 12.10: ALLOCATION AND USE OF SCARCE RESOURCES

1. Each Party shall administer procedures for the allocation and use of scarce
telecommunications resources, including frequencies, numbers and rights of way\(^7\), in an objective, timely, transparent and non-discriminatory fashion.

2. Each Party shall make publicly available the current state of allocated frequency bands but shall not be required to provide detailed identification of frequencies allocated for specific government uses.

3. Decisions on allocating and assigning spectrum and frequency management are not measures that are \textit{per se} inconsistent with Article xx.4 (Market Access), which is applied to Chapter xx (Investment) through Article xx.1(3) (Scope and Coverage). Accordingly, each Party retains the right to exercise its spectrum and frequency management policies, which may affect the number of suppliers of public telecommunications services, provided that this is done in a manner that is consistent with the provisions of this Agreement. The Parties also retain the right to allocate frequency bands taking into account existing and future needs and spectrum availability.

\textbf{ARTICLE 12.11: ENFORCEMENT}

Each Party shall ensure that its telecommunications regulatory authority is authorized to enforce domestic measures relating to the obligations set out in Articles 12.2 through 12.5. Such authority shall include the ability to impose effective sanctions, which may include financial penalties, injunctive relief (on an interim or final basis), or modification, suspension and revocation of licenses.

\textbf{ARTICLE 12.12: RESOLUTION OF DOMESTIC TELECOMMUNICATIONS DISPUTES}

Further to Articles xx.3 (Administrative Proceedings) and xx.4 (Review and Appeal), each Party shall ensure the following:

\textit{Recourse to Telecommunications Regulatory Bodies}

1. (a) Each Party shall ensure that enterprises of the other Party may seek review by a telecommunications body or other relevant body to resolve disputes arising under domestic measures addressing a matter set out in Articles 12.2 through 12.5.

(b) Each Party shall ensure that suppliers of public telecommunications services of the other Party that have requested interconnection with a major supplier in its territory may seek review, within a reasonable and publicly specified period of

\(^7\) For purposes of paragraph 1, rights of way in Bahrain shall mean right of use as provided under Chapter 13 of the Telecommunications law of Bahrain.
time after the supplier requests interconnection, by the telecommunications regulatory body\(^8\) to resolve disputes regarding the terms, conditions and rates for interconnection with such major supplier.

Review and Appeal

2. Each Party shall ensure that any enterprise aggrieved by a determination or decision of the telecommunications regulatory body may obtain review of such determination or decision by an independent judicial authority or other independent tribunal.

ARTICLE 12.13: TRANSPARENCY OF MEASURES RELATING TO TELECOMMUNICATIONS

Further to Chapter Seventeen (Transparency), each Party shall ensure that:

1. Rulemakings, including the basis for such rulemakings, of its telecommunications regulatory body and end-user tariffs filed with its telecommunications regulatory body are promptly published or otherwise made available to all interested persons;

2. Interested persons are provided with adequate advance public notice of and the opportunity to comment on any rulemaking proposed by the telecommunications regulatory body; and

3. Its measures relating to public telecommunications services are made publicly available, including measures relating to:

   a) tariffs and other terms and conditions of service;

   b) procedures relating to judicial and other adjudicatory proceedings;

   c) specifications of technical interfaces;

   d) conditions for attaching terminal or other equipment to the public telecommunications network; and

   e) notification, permit, registration or licensing requirements, if any.

ARTICLE 12.14: FLEXIBILITY IN THE CHOICE OF TECHNOLOGIES

No Party shall prevent suppliers of public telecommunications services from having the

\(^8\) In the United States, this may be a state regulatory authority.
flexibility to choose the technologies that they use to supply their services, including commercial mobile wireless services, subject to requirements necessary to satisfy legitimate public policy interests.

ARTICLE 12.15: FORBEARANCE

1. The Parties recognize the importance of relying on competitive market forces to achieve wide choices in the supply of telecommunications services. To this end, each Party may forbear, to the extent provided for in domestic law, from applying regulation to a service that the Party classifies as a public telecommunications service, upon a determination by its telecommunications regulatory body that:

   (a) enforcement of such regulation is not necessary to prevent unreasonable or discriminatory practices;

   (b) enforcement of such regulation is not necessary for the protection of consumers; and

   (c) forbearance is consistent with the public interest, including promoting and enhancing competition among suppliers of public telecommunications services.

2. Any enterprise aggrieved by a regulatory body’s decision to forbear may obtain judicial review of such decision by an independent and impartial judicial authority.

ARTICLE 12.16: RELATIONSHIP TO OTHER CHAPTERS

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

ARTICLE 12.17: DEFINITIONS

For purposes of this Chapter:

   (a) co-location (physical) means physical access to space in order to install, maintain or repair equipment, at premises owned or controlled and used by a supplier to supply public telecommunications services;

   (b) co-location (virtual) means the ability to lease and control equipment of a supplier of public telecommunications services for the purposes of interconnecting with such supplier or accessing such supplier’s unbundled network elements;
(c) **commercial mobile services** means public telecommunications services supplied through mobile wireless means;

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

(e) **dialing parity** means the ability of an end-user to use an equal number of digits to access a like public telecommunications services, regardless of the public telecommunications services supplier chosen by such end-user;

(f) **end-user** means a final consumer of or final subscriber to a public telecommunications service;

(g) **enterprise** means an entity constituted or organized under the applicable law of a Party, whether for profit or not for profit, and whether privately or government owned or controlled. Forms that an enterprise may take include a corporation, trust, partnership, sole proprietorship, branch, joint venture, association, or similar organization;

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

   (i) are exclusively or predominantly provided by a single or limited number of suppliers, and

   (ii) cannot feasibly be economically or technically substituted in order to provide a service;

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

(j) **leased circuit** means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to, a particular customer or other users.

(k) **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

(i) control over essential facilities or

(ii) use of its position in the market;

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

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

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

(o) person means either a natural person or an enterprise;

(p) public telecommunications service means any telecommunications service that a Party requires, explicitly or in effect, to be offered to the public generally. Such services may include inter alia, telephone and data transmission typically involving customer-supplied information between two or more points without any end-to-end change in the form or content of the customer’s information, and excludes value-added services.

(q) reference interconnection offer means an interconnection offer extended by a major supplier and filed with or approved by a telecommunications regulatory body that is sufficiently detailed to enable a supplier of public telecommunications services that is willing to accept its rates, terms and conditions to obtain interconnection without having to engage in negotiations with the major supplier;

(r) supplier of public telecommunications services means any provider of public telecommunications services;

---

9 In Bahrain, public telecommunications services do not include do not include services provided pursuant to a VSAT license, a paging license, a public access mobile radio services license, a value added services license, an internet exchange license, or an internet service provider license.

10 In the United States, this may be a state regulatory authority.
(s) **telecommunications** means the transmission and reception of signals by any electromagnetic means, including by photonic means;

(t) **telecommunications regulatory body** means a national body responsible for the regulation of telecommunications;

(u) **user** means a service consumer or a service supplier; and

(v) **value-added services** means services which add value to telecommunications services through enhanced functionality. In the United States, these are services as defined in 47 U.S.C. 153 (20).
ANNEX 12-A

In the territory of the United States, Articles 12.3.2 through 12.3.3 do not apply to suppliers of commercial mobile services. In addition, a state regulatory authority may exempt a rural local exchange carrier, as defined in Section 251(f)(2) of the Communications Act of 1934, as amended, from the obligations contained in Articles 12.3.2 through 12.3.3.
1. In the United States, Article 12.4 does not apply to rural telephone companies, as defined in section 3(37) of the Communications Act of 1934, as amended, unless a state regulatory authority orders otherwise. In addition, a state regulatory authority may exempt a rural local exchange carrier, as defined in section 251(f)(2) of the Communications Act of 1934, as amended, from the obligations contained in Article 12.4.

2. In the United States, Articles 12.4.3 through 12.4.8 do not apply to suppliers of commercial mobile services.