

## **Chapter Thirteen**

### **Telecommunications<sup>1</sup>**

#### **Article 13.1: Scope and Coverage**

1. This Chapter applies to:
  - (a) measures adopted or maintained by a Party relating to access to and use of public telecommunications services;
  - (b) measures adopted or maintained by a Party relating to obligations of suppliers of public telecommunications services;
  - (c) other measures relating to public telecommunications networks or services; and
  - (d) measures adopted or maintained by a Party relating to the supply of information services.
  
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 where such networks or services are not offered to the public generally;
  - (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; or
  - (c) prevent a Party from prohibiting persons operating private networks from using their networks to supply public telecommunications networks or services to third parties.

#### **Article 13.2: Access to and Use of Public Telecommunications Services**

1. Each Party shall ensure that enterprises of another Party have access to and use of any public telecommunications service, including leased circuits, offered in its territory or across its

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<sup>1</sup> In place of the obligations established in this Chapter, Costa Rica shall undertake the specific commitments set out in Annex 13.

borders, on reasonable and non-discriminatory terms and conditions, including as set out in paragraphs 2 through 6.

2. Each Party shall ensure that such enterprises 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 leased or owned circuits;
  - (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 person;
  - (d) perform switching, signaling, processing, and conversion functions; and
  - (e) use operating protocols of their choice.

3. Each Party shall ensure that enterprises of another 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 any Party.

4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to:
  - (a) ensure the security and confidentiality of messages; or
  - (b) protect the privacy of non-public personal data of subscribers to public telecommunications services,

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.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks or services, other than that necessary to:
  - (a) safeguard the public service responsibilities of suppliers of public telecommunications networks or 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 conditions for access to and use of public telecommunications networks or services satisfy the criteria set out in paragraph 5, such conditions may include:

- (a) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks or services; and
- (b) a licensing, permit, registration, or notification procedure which, if adopted or maintained, is transparent and provides for the processing of applications filed thereunder in accordance with the Party's national law or regulation.

**Article 13.3: Obligations Relating to Suppliers of Public Telecommunications Services<sup>2</sup>**

*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 another Party.
- (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.
- (c) Each Party shall provide its telecommunications regulatory body the authority to require public telecommunications suppliers to file their interconnection contracts.

*Resale*

2. Each Party shall ensure that suppliers of public telecommunications services do not impose unreasonable or discriminatory conditions or limitations on the resale of those services.

*Number Portability*

3. Each Party shall ensure that suppliers of public telecommunications services in its territory provide number portability to the extent technically feasible, on a timely basis, and on reasonable terms and conditions.<sup>3</sup>

*Dialing Parity*

4. Each Party shall ensure that suppliers of public telecommunications services in its territory provide dialing parity to suppliers of public telecommunications services of another

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<sup>2</sup> This Article is subject to Annex 13.3. Paragraphs 2 through 4 of Article 13.3 do not apply to suppliers of commercial mobile services. Nothing in this Article shall be construed to preclude a Party from imposing the requirements set out in this Article on suppliers of commercial mobile services.

<sup>3</sup> In complying with this paragraph, El Salvador, Guatemala, Honduras, and Nicaragua may take into account the economic feasibility of providing number portability.

Party, and afford suppliers of public telecommunications services of another Party non-discriminatory access to telephone numbers and related services with no unreasonable dialing delays.

**Article 13.4: Additional Obligations Relating to Major Suppliers of Public Telecommunications Services<sup>4</sup>**

*Treatment by Major Suppliers*

1. Each Party shall ensure that major suppliers in its territory accord suppliers of public telecommunications services of another Party treatment no less favorable than such major suppliers accord to their subsidiaries, their 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.

*Competitive Safeguards*

2. (a) Each Party shall maintain<sup>5</sup> 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) 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 public telecommunications services.

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<sup>4</sup> This Article is subject to Annex 13.3. Article 13.4 does not apply to commercial mobile services. This Article is without prejudice to any rights or obligations that a Party may have under the GATS, and nothing in this Article shall be construed to preclude a Party from imposing the requirements set out in this Article on suppliers of commercial mobile services.

<sup>5</sup> For purposes of paragraph 2, “maintain” a measure includes the actual implementation of such measure, as appropriate.

### *Resale*

3. Each Party shall ensure that major suppliers in its territory:
  - (a) offer for resale, at reasonable rates,<sup>6</sup> 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.<sup>7</sup>

### *Unbundling of Network Elements*

4.
  - (a) 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, conditions, and at cost-oriented rates that are reasonable, non-discriminatory, and transparent for the supply of public telecommunications services.
  - (b) Each Party may determine the network elements required to be made available in its territory, and the suppliers that may obtain such elements, in accordance with its law and regulations.

### *Interconnection*

5.
  - (a) General Terms and Conditions  

Each Party shall ensure that major suppliers in its territory provide interconnection for the facilities and equipment of suppliers of public telecommunications services of another 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;

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<sup>6</sup> For purposes of subparagraph (a), wholesale rates set pursuant to a Party's law and regulations satisfy the standard of reasonableness.

<sup>7</sup> 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.

- (iii) of a quality no less favorable than that provided by such major suppliers for their own like services, for like services of non-affiliated service suppliers, or for their subsidiaries or other affiliates;
- (iv) in a timely fashion, on terms, conditions (including technical standards and specifications), and, subject to Annex 13.4.5, cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the suppliers need not pay for network components or facilities that they do not require for the service to be provided; and
- (v) on 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 another Party may interconnect their facilities and equipment with those of major suppliers 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 suppliers offer 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 major suppliers in its territory to make publicly available reference interconnection offers or other standard interconnection offers containing the rates, terms, and conditions that the major suppliers offer 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 major suppliers in its territory.

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

- (i) Each Party shall require major suppliers 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 major suppliers in its territory and other suppliers of public telecommunications services in its territory.

*Provisioning and Pricing of Leased Circuits Services*

- 6. (a) Each Party shall ensure that major suppliers in its territory provide enterprises of another Party leased circuits services that are public telecommunications services on terms, 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 major suppliers in its territory to offer leased circuits services that are public telecommunications services to enterprises of another Party at flat-rate, cost-oriented prices.

*Co-location*

- 7. (a) Subject to subparagraphs (b) and (c), each Party shall ensure that major suppliers in its territory provide to suppliers of public telecommunications services of another Party physical co-location of equipment necessary for interconnection on terms, 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 major suppliers in its territory:
  - (i) provide an alternative solution, or
  - (ii) facilitate virtual co-location in its territory,on terms, conditions, and at cost-oriented rates that are reasonable, non-discriminatory, and transparent.
- (c) Each Party may specify in its law or regulations which premises are subject to subparagraphs (a) and (b).

*Access to Rights-of-Way*

- 8. Subject to Annex 13.4.8, each Party shall ensure that major suppliers in its territory afford access to their poles, ducts, conduits, and rights-of-way to suppliers of public

telecommunications services of another Party on terms, conditions, and at rates that are reasonable and non-discriminatory.

### **Article 13.5: Submarine Cable Systems**

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

### **Article 13.6: Conditions for the Supply of Information Services**

1. No Party may require an enterprise in its territory that it classifies<sup>8</sup> as a supplier of information services and that supplies such services over facilities that it does not own to:

- (a) supply such services to the public generally;
- (b) cost-justify its 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 subparagraphs (a) through (e) to remedy a practice of a supplier of information services that the Party has found in a particular case to be anti-competitive under its law or regulations, or to otherwise promote competition or safeguard the interests of consumers.

### **Article 13.7: Independent Regulatory Bodies<sup>9</sup> and Government-Owned Telecommunications Suppliers**

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 any such supplier.

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<sup>8</sup> For purposes of applying this provision, each Party may, through its telecommunications regulatory body, classify which services in its territory are information services.

<sup>9</sup> Each Party shall endeavor to ensure that its telecommunications regulatory body has adequate resources to carry out its functions.

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 may accord more favorable treatment to a supplier of public telecommunications services or to a supplier of information services than that accorded to a like supplier of another Party on the ground that the supplier receiving more favorable treatment is owned, wholly or in part, by the national government of the Party.

#### **Article 13.8: 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 13.9: Licenses and Other Authorizations**

1. Where a Party requires a supplier of public telecommunications services to have a license, concession, permit, registration, or other type of authorization, the Party shall make publicly available:

- (a) all applicable licensing or authorization criteria and procedures it applies;
- (b) the time it normally requires to reach a decision concerning an application for a license, concession, permit, registration, or other type of authorization; and
- (c) the terms and conditions of all licenses or authorizations it has issued.

2. Each Party shall ensure that, on request, an applicant receives the reasons for the denial of a license, concession, permit, registration, or other type of authorization.

#### **Article 13.10: 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 allocated frequency bands but shall not be required to provide detailed identification of frequencies allocated for specific government uses.

3. For greater certainty, a Party's measures regarding the allocation and assignment of spectrum and regarding frequency management are not measures that are *per se* inconsistent with

Article 11.4 (Market Access), which is applied to Chapter Ten (Investment) through Article 11.1.3 (Scope and Coverage). Accordingly, each Party retains the right to establish and apply its spectrum and frequency management policies, which may limit the number of suppliers of public telecommunications services, provided that it does so in a manner that is consistent with this Agreement. Each Party also retains the right to allocate frequency bands taking into account existing and future needs.

### **Article 13.11: Enforcement**

Each Party shall provide its competent authority with the authority to establish and enforce the Party's measures relating to the obligations set out in Articles 13.2 through 13.5. Such authority shall include the ability to impose effective sanctions, which may include financial penalties, injunctive relief (on an interim or final basis), or the modification, suspension, and revocation of licenses or other authorizations.

### **Article 13.12: Resolution of Domestic Telecommunications Disputes**

Further to Articles 18.4 (Administrative Proceedings) and 18.5 (Review and Appeal), each Party shall ensure the following:

#### *Recourse to Telecommunications Regulatory Bodies*

- (a) (i) Each Party shall ensure that enterprises of another Party may seek review by a telecommunications regulatory body or other relevant body to resolve disputes regarding the Party's measures relating to a matter set out in Articles 13.2 through 13.5.
- (ii) Each Party shall ensure that suppliers of public telecommunications services of another Party that have requested interconnection with a major supplier in the Party's territory may seek review, within a reasonable and publicly available period of time after the supplier requests interconnection, by a telecommunications regulatory body<sup>10</sup> to resolve disputes regarding the terms, conditions, and rates for interconnection with such major supplier.

#### *Reconsideration*

- (b) Each Party shall ensure that any enterprise that is aggrieved or whose interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may petition the body to reconsider that determination or decision. No Party may permit such a petition to constitute grounds for non-compliance with the determination or decision of the

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<sup>10</sup> In the United States, this body may be a state regulatory authority.

telecommunications regulatory body unless an appropriate authority stays such determination or decision.

### *Judicial Review*

- (c) Each Party shall ensure that any enterprise that is aggrieved or whose interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may obtain judicial review of such determination or decision by an independent judicial authority.

### **Article 13.13: Transparency**

Further to Articles 18.2 (Publication) and 18.3 (Notification and Provision of Information), each Party shall ensure that:

- (a) 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 publicly available;
- (b) interested persons are provided with adequate advance public notice of, and the opportunity to comment on, any rulemaking that its telecommunications regulatory body proposes; and
- (c) its measures relating to public telecommunications services are made publicly available, including measures relating to:
  - (i) tariffs and other terms and conditions of service;
  - (ii) procedures relating to judicial and other adjudicatory proceedings;
  - (iii) specifications of technical interfaces;
  - (iv) bodies responsible for preparing, amending, and adopting standards-related measures affecting access and use;
  - (v) conditions for attaching terminal or other equipment to the public telecommunications network; and
  - (vi) notification, permit, registration, or licensing requirements, if any.

### **Article 13.14: Flexibility in the Choice of Technologies**

No Party may prevent suppliers of public telecommunications services from having the 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 13.15: Forbearance**

The Parties recognize the importance of relying on market forces to achieve wide choices in the supply of telecommunications services. To this end, each Party may forbear from applying a regulation to a service that the Party classifies as a public telecommunications service, if its telecommunications regulatory body determines 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 between suppliers of public telecommunications services.

#### **Article 13.16: 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 13.17: Definitions**

For purposes of this Chapter:

**commercial mobile services** means public telecommunications services supplied through mobile wireless means;

**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 like public telecommunications service, regardless of the public telecommunications service supplier chosen by such end-user;

**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 2.1 (Definitions of General Application), and includes a branch of an enterprise;

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

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

**information service** means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service;

**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;

**leased circuits** 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 of the customer's choosing;

**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;

**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;

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

**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 like 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 supplier to supply public telecommunications services;

**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, but does not include information services;

**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;

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

**telecommunications regulatory body** means a national body responsible for the regulation of telecommunications; and

**user** means an end-user or a supplier of public telecommunications services.

## Annex 13

### Specific Commitments of Costa Rica on Telecommunications Services

#### I. Preamble

The Government of the Republic of Costa Rica:

acknowledging the unique nature of the Costa Rican social policy on telecommunications, and reaffirming its decision to ensure that the process of opening its telecommunications services sector must be based on its Constitution;

emphasizing that such process shall be to the benefit of the user and shall be based on the principles of graduality, selectivity, and regulation, and in strict conformity with the social objectives of universality and solidarity in the supply of telecommunications services; and

recognizing its commitment to strengthen and modernize the *Instituto Costarricense de Electricidad* (ICE) as a market participant in a competitive telecommunications marketplace while ensuring that the use of its infrastructure shall be remunerated and to develop a regulatory body to oversee market development;

undertakes through this Annex the following specific commitments on telecommunications services.

#### II. Modernization of ICE

Costa Rica shall enact a new legal framework to strengthen ICE, through its appropriate modernization, no later than December 31, 2004.

#### III. Selective and Gradual Market Opening Commitments

##### 1. Market Access Standstill

Costa Rica shall allow service providers of another Party to supply telecommunications services on terms and conditions that are no less favorable than those established by or granted pursuant to its legislation in force on January 27, 2003.

##### 2. Gradual and Selective Opening of Certain Telecommunications Services

- (a) As provided in Annex I, Costa Rica shall allow telecommunications services providers of another Party, on a non-discriminatory basis, to effectively compete to supply directly to the customer, through the technology of their choice, the following telecommunications services in its territory:<sup>1</sup>

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<sup>1</sup> If Costa Rica requires a license for the provision of a listed service, Costa Rica shall make licenses available within the timeframes specified in this subparagraph.

- (i) private network services,<sup>2</sup> no later than January 1, 2006;
  - (ii) Internet services,<sup>3</sup> no later than January 1, 2006; and
  - (iii) mobile wireless services,<sup>4</sup> no later than January 1, 2007.
- (b) Subparagraph (a) shall also apply to any other telecommunications service that Costa Rica may decide to allow in the future.

#### IV. Regulatory Principles<sup>5</sup>

The regulatory framework on telecommunications services that the Government of Costa Rica shall have in force as of January 1, 2006, shall conform, among others, to the following provisions:

##### 1. Universal Service

Costa Rica has the right to define the kind of universal service obligations it wishes to maintain. Such obligations will not be regarded as anti-competitive *per se*, provided they are administered in a transparent, non-discriminatory, and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined.

##### 2. Independence of the Regulatory Authority

Costa Rica shall establish or maintain a regulatory authority for telecommunications services, which shall be separate from and not accountable to any supplier of telecommunications services. Costa Rica shall ensure that its telecommunications regulatory authority is authorized to impose effective sanctions to enforce domestic measures relating to the obligations set out in this Annex. This regulatory authority may include jurisdiction over spectrum management, universal service, tariffing, and licensing of new market entrants. The decisions and the procedures of the regulatory authority shall be impartial with respect to all market participants.

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<sup>2</sup> **Private network services** (closed-user group services) mean networks provided for communications with no interconnection to the public switched telecommunications network at either end. Nothing in this Annex shall be construed to prevent Costa Rica from prohibiting persons operating private networks from using their networks to supply public telecommunications networks or services to third parties.

<sup>3</sup> **Internet services** shall include electronic mail, retrieval and processing of on-line information and databases and electronic data exchange services, and offering the ability to access the Internet.

<sup>4</sup> **Mobile wireless services** mean voice, data, and/or broadband services provided by radio electric means in specifically allocated bands, using mobile or fixed terminal equipment, using cellular, PCS (Personal Communications Service), satellite, or any other similar technology that may be developed in the future for these services.

<sup>5</sup> For greater certainty, this section does not create market access rights or obligations.

### 3. Transparency

Costa Rica shall ensure that applicable procedures for interconnection to a major supplier and either its interconnection agreements or referenced interconnection offers are made publicly available. Costa Rica shall also make publicly available all licensing or authorization criteria and procedures required for telecommunications service suppliers, and the terms and conditions of all licenses or authorizations issued.

### 4. Allocation and Use of Scarce Resources

Costa Rica shall ensure that procedures for the allocation and use of limited resources, including frequencies, numbers, and rights of way, are administered in an objective, timely, transparent, and non-discriminatory manner by a competent domestic authority.<sup>6</sup> The Republic of Costa Rica shall issue licenses for use of spectrum directly to the service providers, in accordance with article 121, item 14 of the *Constitución Política de la República de Costa Rica*.

### 5. Regulated Interconnection

- (a) Costa Rica shall ensure that public telecommunications services suppliers of another Party are provided interconnection with a major supplier in a timely fashion, under non-discriminatory terms, conditions,<sup>7</sup> and cost-oriented rates that are transparent, reasonable, and having regard to economic feasibility.
- (b) Costa Rica shall also ensure that a service supplier requesting interconnection with a major supplier has recourse to an independent domestic body,<sup>8</sup> which may be the regulatory authority referred to in paragraph 2, to resolve disputes regarding appropriate terms, conditions, and rates for interconnection within a reasonable time.

### 6. Access to and Use of the Network

- (a) Costa Rica shall ensure that enterprises of another Party have access to and use of any public telecommunications services, including leased circuits, offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions and are permitted to:

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<sup>6</sup> The competent domestic authority shall be separate from and not accountable to any supplier of telecommunications services.

<sup>7</sup> For purposes of subparagraph (a), **conditions** include technical regulations and specifications, as well as the quality of interconnection.

<sup>8</sup> The independent domestic body shall be separate from and not accountable to any supplier of telecommunications services.

- (i) purchase or lease and attach terminal or other equipment that interfaces with a public telecommunications network;
  - (ii) provide services to individual or multiple end-users over leased or owned circuits;
  - (iii) connect owned or leased circuits with public telecommunications networks and services in its territory, or across Costa Rica's borders or with circuits leased or owned by another person;
  - (iv) perform switching, signaling, processing, and conversion functions, and use operating protocols of their choice; and
  - (v) use public telecommunications services for the movement of information contained in databases or otherwise stored in machine-readable form in the territory of any Party.
- (b) Notwithstanding subparagraph (a), Costa Rica may take such measures as are necessary to ensure the security and confidentiality of messages or to protect the privacy of non-public personal data of subscribers to public telecommunications services, 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.
- (c) Costa Rica shall also ensure that no condition is imposed on access to and use of public telecommunications networks or services, other than that necessary to safeguard the public service responsibilities of providers of public telecommunications networks or services, in particular their ability to make their networks or services available to the public generally, or protect the technical integrity of public telecommunications networks or services.

## 7. Provision of Information Services

- (a) Costa Rica may not require an enterprise of another Party in its territory that it classifies<sup>9</sup> as a supplier of information services and that supplies such services over facilities that it does not own to:
- (i) supply such services to the public generally;
  - (ii) cost-justify rates for such services;
  - (iii) file tariffs for such services;

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<sup>9</sup> The telecommunications regulatory authority will have the competence within its territory to classify the services included in the information services category.

- (iv) interconnect its networks with any particular customer for the supply of such services; or
  - (v) conform to any particular standard or technical regulation for interconnection other than that for interconnection to a public telecommunications network.
- (b) Notwithstanding subparagraph (a), Costa Rica may take any action referred to in clauses (i) through (v) to remedy a practice of a supplier of information services that it has found in a particular case to be anti-competitive under its law or regulations, or to otherwise promote competition or safeguard the interests of consumers.

8. Competition

Costa Rica shall maintain appropriate measures for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in anti-competitive practices, such as not making available, on a timely basis, to suppliers of public telecommunications services, technical information about essential facilities and commercially relevant information that is necessary for them to provide public telecommunications services.

9. Submarine Cable Systems

Costa Rica shall ensure reasonable and non-discriminatory treatment for access 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.

10. Flexibility in the Choice of Technologies

Costa Rica may not prevent suppliers of public telecommunications services from having the flexibility to choose the technologies that they use to supply their services, subject to requirements necessary to satisfy legitimate public policy interests.

## **Annex 13.3**

### **Rural Telephone Suppliers**

1. A state regulatory authority in the United States 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 paragraphs 2 through 4 of Article 13.3 and from the obligations contained in Article 13.4.
2. Article 13.4 does not apply to rural telephone companies in the United States, as defined in section 3(37) of the *Communications Act of 1934*, as amended by the *Telecommunications Act of 1996*, unless a state regulatory authority orders otherwise.
3. El Salvador, Guatemala, Honduras, and Nicaragua may designate and exempt a rural telephone company in its territory from paragraphs 2 through 4 of Article 13.3 and from Article 13.4, provided that the rural telephone company supplies public telecommunications services to fewer than two percent of the subscriber lines installed in the Party's territory. The number of subscriber lines supplied by a rural telephone company includes all subscriber lines supplied by the company, and by its owners, subsidiaries, and affiliates.
4. Nothing in this Annex shall be construed to preclude a Party from imposing the requirements set out in Article 13.4 on rural telephone companies.

## **Annex 13.4.5**

### **Interconnection**

1. For any Party that does not have an existing commitment under the GATS to ensure that a major supplier in its territory provides interconnection at cost-oriented rates, the obligation under Article 13.4.5 to ensure the provision of cost-oriented interconnection shall become effective:

- (a) two years after the date of entry into force of this Agreement; or
- (b) January 1, 2007,

whichever is earlier.

2. During the transition period, each such Party shall ensure that major suppliers of public telecommunications services in its territory:

- (a) do not charge interconnection rates above the rates charged on December 31, 2003; and
- (b) proportionally reduce interconnection rates as necessary to ensure that a cost-oriented interconnection rate has been achieved by the end of the transition period.

## **Annex 13.4.8**

### **Access to Rights-of-Way**

Article 13.4.8 shall apply with respect to El Salvador beginning when its law provides that poles, ducts, conducts, and rights-of-way constitute essential resources.