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**Subject to Legal Review for Accuracy, Clarity, and Consistency**  
**March 31, 2004**

**CHAPTER THIRTEEN**  
**TELECOMMUNICATIONS**

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, including major suppliers;
  - (c) measures adopted or maintained by a Party relating to the provision of value-added services; and
  - (d) other measures relating to public telecommunications networks or 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 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 adopting or enforcing new or existing measures in its telecommunications laws or regulations which are not inconsistent with this Chapter.

ARTICLE 13.2: ACCESS TO AND USE OF PUBLIC TELECOMMUNICATIONS SERVICES

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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 6.
2. Each Party shall ensure that service suppliers of the other Party are permitted to:<sup>1</sup>
  - (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<sup>2</sup> 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, other than as necessary to ensure the availability of telecommunications transport networks and services to the public generally.
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 paragraph 3, a Party may take such measures as are necessary:
  - (a) to ensure the security and confidentiality of messages; or
  - (b) 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.

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<sup>1</sup> For Morocco, subparagraphs (b) through (e) apply only to service suppliers in its territory classified as suppliers of public telecommunications services or suppliers of value-added services.

<sup>2</sup> In Morocco, only a licensed telecommunications supplier is permitted to own circuits.

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5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications transport networks and services, other than as necessary:

- (a) to safeguard the public service responsibilities of suppliers of public telecommunications transport networks and services, in particular their ability to make their networks or services available to the public generally;
- (b) to protect the technical integrity of public telecommunications transport networks or services; or
- (c) to ensure that service suppliers of the other Party do not supply services unless permitted pursuant to commitments in this Agreement.

6. Provided that they satisfy the criteria set out in paragraph 5, conditions for access to and use of public telecommunications transport networks and services may include:

- (a) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks and services;
- (b) requirements, where necessary, for the inter-operability of such services;
- (c) type approval of terminal or other equipment which interfaces with the network and technical requirements relating to the attachment of such equipment to such networks;
- (d) restrictions on interconnection of private leased or owned circuits with such networks or services or with circuits leased or owned by another service supplier; or
- (e) notification, registration, and licensing.

**ARTICLE 13.3: OBLIGATIONS RELATING TO SUPPLIERS OF PUBLIC TELECOMMUNICATIONS SERVICES<sup>3</sup>**

*Interconnection*

1. (a) Each Party shall ensure that suppliers of public telecommunications services in its

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<sup>3</sup> Subject to Annex 13-A.

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territory provide, directly or indirectly,<sup>4</sup> interconnection with the suppliers of public telecommunications services of the other Party within the same territory.

- (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.

*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 public telecommunications services.<sup>5</sup>

*Number Portability*

3. 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.<sup>6</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 the other Party.

ARTICLE 13.4: ADDITIONAL OBLIGATIONS RELATING TO MAJOR SUPPLIERS OF PUBLIC  
TELECOMMUNICATIONS SERVICES<sup>7</sup>

*Treatment by Major Suppliers*

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

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<sup>4</sup> For Morocco, indirect interconnection means through another supplier of public telecommunications services in the same territory.

<sup>5</sup> For Morocco, resale is offered on a commercial basis, subject to commercially negotiated terms and conditions.

<sup>6</sup> Morocco will implement this provision upon completion of pending regulations.

<sup>7</sup> Subject to Annex 13-B.

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- (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.

*Unbundling of Network Elements*

- 3. 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,<sup>8</sup> non-discriminatory, and transparent for the supply of public telecommunications services.

*Interconnection*

- 4. (a) General Terms and Conditions

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

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<sup>8</sup> Morocco will implement this provision upon completion of pending regulations.

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- (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, 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 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 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.

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(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.<sup>9</sup>
- (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*

- 5. (a) Each Party shall ensure that major suppliers in its territory provide 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 major suppliers 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*

- 6. (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 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

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<sup>9</sup> In the United States, this may be a state regulatory authority.

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limitations, each Party shall ensure that major suppliers in its territory:

- (i) provide an alternative solution; or
- (ii) facilitate 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.

*Access to Rights-of-Way*

7. Each Party shall endeavor to ensure that major suppliers in its territory afford access to poles, ducts, conduits, and rights-of-way to suppliers of public telecommunications services of the other Party on reasonable and nondiscriminatory rates, terms, and conditions.

ARTICLE 13.5: SUBMARINE CABLE SYSTEMS AND SATELLITE SERVICES

1. 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.

2. Each Party shall ensure reasonable and non-discriminatory treatment for access for public telecommunications service suppliers to satellite services in its territory, where a supplier of such service is licensed by the Party to provide the satellite service as a public telecommunications service.

ARTICLE 13.6: 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;

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- (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 13.7: INDEPENDENT REGULATORY BODIES AND PRIVATIZATION**

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. 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 an ownership interest in a supplier of public telecommunications services, it shall notify the other Party of its intention to reduce or eliminate such interest as soon as possible.

**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: LICENSING PROCESS**

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

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- (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 13.10: 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, 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 *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 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.

ARTICLE 13.11: ENFORCEMENT

Each Party shall ensure that its competent authority is authorized to enforce domestic 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 modification, suspension, and revocation of licenses.

ARTICLE 13.12: RESOLUTION OF DOMESTIC TELECOMMUNICATIONS DISPUTES

Further to Articles 18.3 (Administrative Proceedings) and 18.4 (Review and Appeal), each Party

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shall ensure the following:

*Recourse to Telecommunications Regulatory Bodies*

- (a) (i) Each Party shall ensure that enterprises of the other Party may seek review by a telecommunications regulatory body or other relevant body to resolve disputes arising under domestic measures addressing a matter set out in Articles 13.2 through 13.5.
- (ii) 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 available period of time after the supplier requests interconnection, by the 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 enterprises aggrieved or whose interests are adversely affected by a determination or decision of the telecommunications regulatory body may petition the body to reconsider that determination or decision. Neither Party may permit such a petition to constitute grounds for non-compliance with such determination or decision of the telecommunications regulatory body unless an appropriate authority stays such determination or decision.

*Judicial Review*

- (c) Each Party shall ensure that any enterprise aggrieved by a determination or decision of the telecommunications regulatory body may obtain judicial review of such determination or decision to an independent judicial authority.

ARTICLE 13.13: TRANSPARENCY OF MEASURES RELATING TO TELECOMMUNICATIONS

Further to Chapter 18 (Transparency), each Party shall ensure that:

- (a) rulemakings, including the basis for such rulemakings, of its telecommunications

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

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regulatory body and end-user tariffs filed with its telecommunications regulatory body are promptly published or otherwise made available to all interested persons;

- (b) 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
- (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) conditions for attaching terminal or other equipment to the public telecommunications network; and
  - (v) notification, permit, registration, or licensing requirements, if any.

**ARTICLE 13.14: FLEXIBILITY IN THE CHOICE OF TECHNOLOGIES**

No Party shall 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 the exercise of spectrum and frequency management policies and other requirements necessary to satisfy legitimate public policy interests such as technical specifications and national frequency tables.

**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 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;

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and

- (c) forbearance is consistent with the public interest, including promoting and enhancing competition among 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:

- (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

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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 circuits** means facilities between designated terminating points of a public telecommunications network leased to a user by a supplier of public telecommunications services, excluding any switching controlled by the user;
- (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;

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- (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. With respect to the United States' obligations arising under this Agreement, public telecommunications services in the territory of the United States do not include 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<sup>11</sup> 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;<sup>12</sup>
- (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). In Morocco, these are services defined in 24-96 Law for Posts and Telecommunications.<sup>13</sup>

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<sup>11</sup> In the United States, this may be a state regulatory authority.

<sup>12</sup> In Morocco, suppliers of public telecommunications services are subject to the Moroccan licensing regime of the Moroccan telecommunications law 24-96.

<sup>13</sup> In Morocco, suppliers of value-added services are subject to the Moroccan declaration regime.

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**ANNEX 13-A**

For the purposes of the Chapter, in the territory of the United States, Articles 13.3.2 through 13.3.4 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 13.3.2 through 13.3.4.

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**ANNEX 13-B**

1. The purposes of this Chapter, in the United States, Article 13.4 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 13.4.
  
2. For purposes of this Chapter, in the United States, Article 13.4 does not apply to suppliers of commercial mobile services.