

**MALAYSIAN COMMUNICATIONS AND MULTIMEDIA
COMMISSION**

**PUBLIC INQUIRY PAPER ON
DRAFT MANDATORY STANDARD ON ACCESS**

30 APRIL 2003

MCMC/IDD/PRID/MS(Access)/No. 1 of 2003

PREFACE

On 18 March 2003, the Minister of Energy, Communications and Multimedia (**the Minister**) directed the Malaysian Communications and Multimedia Commission (**the Commission**) to determine a Mandatory Standard on Access (*Ministerial Direction to Determine a Mandatory Standard on Access, Direction No 2 of 2003*). The Minister's direction provides that the matters that may be addressed in the Mandatory Standard on Access (**the Standard**) may include (but are not limited to) the following matters:

- (a) the time frame and procedures for negotiations and concluding of access agreements;
- (b) rate methodologies;
- (c) protection of intellectual property;
- (d) protection of commercial information;
- (e) provisioning of facilities;
- (f) sharing of technical information;
- (g) terms and conditions applicable to access agreements; and
- (h) such other matters as are necessary for giving effect to standard access obligations.

In accordance with the Minister's direction, the Commission is hereby holding a public inquiry to determine the Standard in accordance with the procedures outlined in Chapter 3 of Part V of the *Communications and Multimedia Act 1988* [Act 588] (**the CMA**).

The Commission invites members of the public to participate in this inquiry by making written submissions on any matter they consider relevant to the inquiry including proposing or suggesting amendments or variations to the draft Standard proposed in Part II of this Public Inquiry Paper.

Participants are encouraged to support their submissions with reasons and where appropriate provide or refer to evidence or other relevant information in support of the submissions.

Written submissions on the matters raised in the Public Inquiry Paper in both hard copy and electronic form should be provided to the Commission by **12 noon on Monday, 30 June 2003** and addressed to:

The Chairman
Malaysian Communications and Multimedia Commission
Level 11, Menara Dato' Onn
Putra World Trade Centre
45, Jalan Tun Ismail
50480 Kuala Lumpur

Attention: Mandatory Standard on Access – Written Submissions
(Janakky Raju)

Tel. 03-4047 7000
Fax:03-2693 4881
Email: msaccess@cmc.gov.my

As this is a public inquiry, the Commission reserves the right to make extracts of submissions or entire submissions available for others to read. Material marked as “**CONFIDENTIAL**” by persons making submissions will not be made publicly available by the Commission. However, if a person wishes to make a confidential submission, it would be of assistance if a “public” version of the submission were also provided (if possible).

The Commission will also hold a public hearing to which the public is invited. The public hearing will be held at **Bilik Labuan, Level 5, PWTC** on **6 June 2003**. Any member of the public who wishes to make oral submissions on that date on any matter they consider relevant to the inquiry must give written notice to such effect to the Commission in both hard copy and electronic form by **12 noon on Friday, 30 May 2003** and addressed to:

The Chairman
Malaysian Communications and Multimedia Commission
Level 11, Menara Dato' Onn
Putra World Trade Centre
45, Jalan Tun Ismail
50480 Kuala Lumpur

Attention: Mandatory Standard on Access – Oral Hearings
(Janakky Raju)

Tel. 03-4047 7000
Fax:03-2693 4881
Email: msaccess@cmc.gov.my

As required under section 65 of the CMA, the Commission will publish a report of this inquiry within 30 days of the conclusion of this inquiry (that is, after the Commission has completed its consideration of all written and oral submissions).

More details about the public inquiry process are set out in chapter 5 of Part I of this Public Inquiry Paper.

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PART I
EXPLANATORY PAPER ON DRAFT
MANDATORY STANDARD ON ACCESS

CHAPTER 1 : ROADMAP OF PART I

- 1.1 This Chapter contains a roadmap of Part I of the Public Inquiry Paper.
- 1.2 Chapter 2 contains a glossary of some terms used in the Public Inquiry Paper.
- 1.3 Chapter 3 contains an outline of the legislative basis for the determination of the Standard as well as a brief overview of some of the theoretical issues dealt with by the Commission during the preparation of the draft Standard (contained in Part II of this Public Inquiry Paper).
- 1.4 Chapter 4 contains an outline of the key issues and matters included in the draft Standard, and identifies particular questions where the Commission is seeking public comment.
- 1.5 Chapter 5 contains further detail concerning the process of the public inquiry.

CHAPTER 2 : GLOSSARY OF TERMS

2.1 Terminology

This subsection contains a short glossary of the main terms used in Part I. For clarification, if capitalised terms are not defined in this Chapter 2, reference should be made to Chapter 1 of the draft Standard (in Part II of this Public Inquiry Paper), and in particular, to subsections 1.2 and 1.3.

2.1.1 **CMA:** Communications and Multimedia Act 1998 [Act 588].

2.1.2 **Access Provider:**

- (a) a Network Facilities Provider who owns Facilities; or
- (b) a Network Service Provider who provides Services that are included in the Access List; or
- (c) a holder of a registered licence under section 278 of the CMA; and
- (d) for the avoidance of doubt includes any of the persons referred to in paragraph 2.1.2(a) or 2.1.2(b) above whether or not they are holders of any Licence granted under the CMA;

2.1.3 **Access Seeker** means a Network Facilities Provider, a Network Service Provider, an Applications Service Provider, or a Content Applications Service Provider (as defined in the CMA) who makes a written request for access to Network Facilities or Network Service that are listed in the Access List, including a holder of a registered licence under section 278 of the CMA.

2.1.4 **Commission Act:** Malaysian Communications and Multimedia Commission Act 1998 [Act 589].

2.1.5 **Commission:** the Malaysian Communications and Multimedia Commission established under the Commission Act;

2.1.6 **Standard:** the Mandatory Standard on Access to be determined at the conclusion of this public inquiry process, a draft version of which is set out in Part II of this Public Inquiry Paper;

2.1.7 **SAOs:** the Standard Access Obligations contained in section 149 of the CMA.

CHAPTER 3 : BACKGROUND

3.1 Legislative basis for the process

3.1.1 On 18 March 2003, the Minister of Energy, Communications and Multimedia, **(the Minister)** under section 7 of the CMA, directed the Commission to determine the Standard.

3.1.2 Subsection 7(1) of the CMA states that:

“The Minister may, from time to time, issue directions to the Commission on the exercise of the Commission’s powers and the performance of the Commission’s functions and duties under this Act, whether of a general character or otherwise.”

3.1.3 With regard to determining the Standard the Commission is acting under the Direction specified above and carrying out its duties to determine such Standard under subsection 104(2) of the CMA, which states that:

“The Commission shall determine a mandatory standard if it is subject to a direction from the Minister to determine a mandatory standard in place of a voluntary industry code”.

3.1.4 As such, mandating the Standard falls under the Commission’s power to make determinations, as provided for in subsection 55(1). Subsection 55(1) states that:

“The Commission may, from time to time, determine any matter specified in this Act as being subject to the Commission’s determination.”

3.1.5 In carrying out its powers to determine matters, subsection 55(3) further states that:

“Notwithstanding subsection (1), the Commission shall not conduct an inquiry unless it is satisfied that the matter is of significant interest to either the public or to current or prospective licensees under this Act.”

- 3.1.6 The Commission believes that the matters covered by the Minister’s direction and hence the draft Standard are of sufficient interest to the public and to current or prospective licensees under the CMA to warrant a public inquiry.
- 3.1.7 Thus, under the powers and functions provided for by the CMA, the Commission is hereby holding a public inquiry to determine the Standard and hereby invites members of the public to participate in this inquiry by making written submissions on the matters in this Public Inquiry Paper.
- 3.1.8 The Commission will also hold a public hearing to which the public is invited and to which the public may make oral submissions.
- 3.1.9 As this is a public inquiry, the Commission reserves the right to make extracts of submissions or entire submissions available for others to read. However, materials marked as “CONFIDENTIAL” by persons making submissions will not be made publicly available. If a person wishes to make a confidential submission, the Commission requests that a “public” version of the submission also be provided.

3.2 Other processes and flexibility

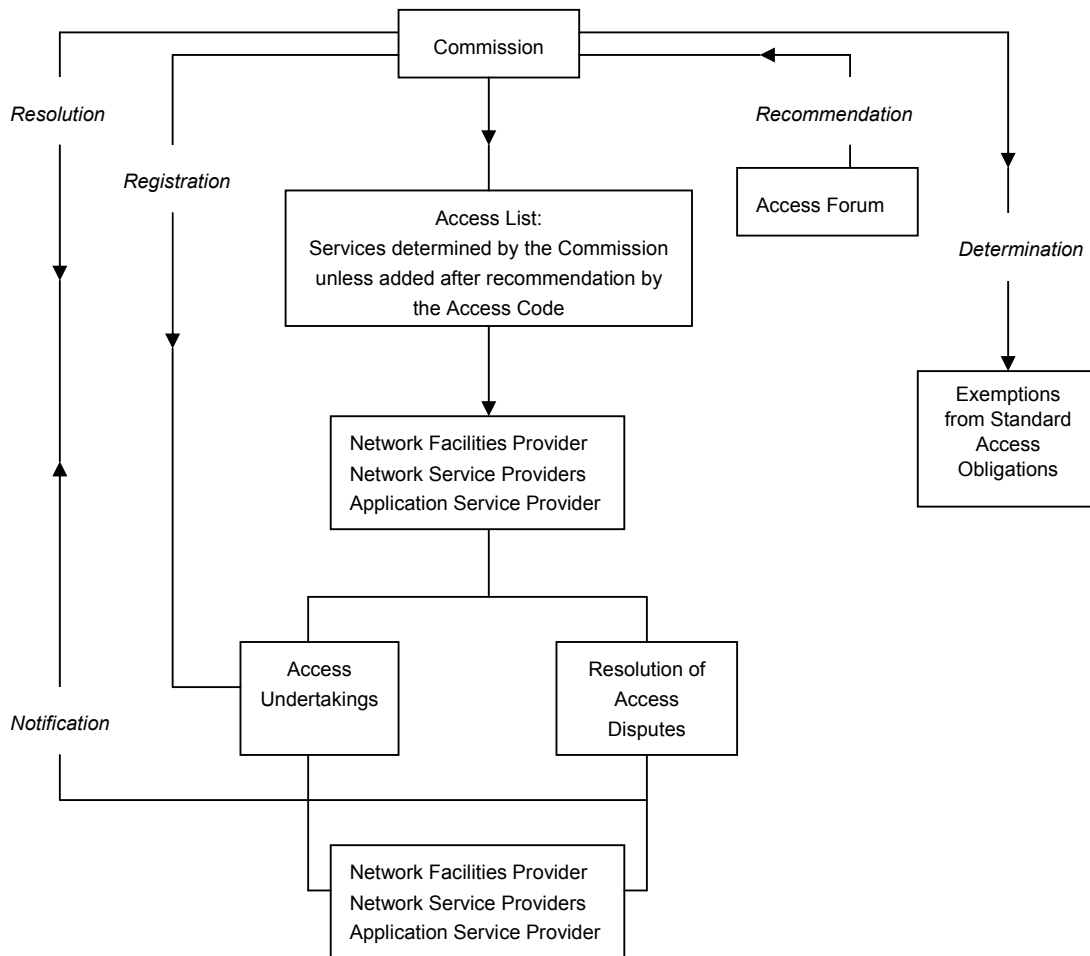
- 3.2.1 Within the context of the process leading to drafting the Standard, the Commission recognised a number of objectives:¹
- (a) the promotion of self regulation as far as possible;
 - (b) the encouragement of industry participation in relevant processes;
 - (c) the encouragement of negotiation between access seekers and access providers;
 - (d) the provision of advance guidelines (to inform access seekers and access providers);
 - (e) developing mechanisms for independent dispute resolution; and
 - (f) the acceptance of flexibility.

¹ Without intending to limit the ambit of the objectives of the CMA.

3.3 Regulatory background

3.3.1 This process represents part of the ongoing design of an overarching access regime for the communications and multimedia sector in Malaysia. Figure 1 represents an outline of the access regime in Malaysia.

Figure 1 : Outline of Access Regime in Malaysia



3.3.2 The CMA sets up an access regime incorporating each of the following components:

(a) Applicability of access regime

The access providers are identified in the CMA as Network Facilities Providers and Network Service Providers.²

The CMA provides specifically that the following persons are access seekers:

- (i) other Network Facilities Providers;
- (ii) other Network Service Providers;
- (iii) Applications Service Providers; and
- (iv) Content Applications Service Providers.³

(b) Access List

Those facilities and services that may be included on an access list are:

- (i) Network Facilities;
- (ii) Network Services; and
- (iii) other Facilities and Services which facilitate the provision of Network Services or Applications Services, including Content Applications Services.⁴

The current Access List is contained in the *Commission Determination on Access List, Determination No. 1 of 2001* (made on 24 March 2001).

(c) Other access provisions

The CMA contains provisions that extend to access beyond items specified on the Access List⁵. Thus a Network Facilities Provider is

² Subsection 149(1).

³ Subsection 149(1) of the CMA.

⁴ Paragraphs 145(1) (a), (b), and (c) of the CMA.

required to provide a Network Services Provider with non-discriminatory access to any post, network facilities or right-of-way which it owns or controls. However, a Network Facilities Provider may deny such access where there is insufficient capacity, or for reasons of safety, security, reliability, or difficulty of a technical or engineering nature.⁶

If the abovementioned Network Facilities are covered in the *Commission Determination on the Access List, Determination No. 1 of 2001*, the provisions of the Standard shall apply.

(d) Standard access obligations

Standard access obligations (**SAOs**) in Malaysia are as follows:

- (i) A Network Facilities Provider or a Network Service Provider shall provide access to their Network Facilities or Network Services listed in the Access List to any other Network Facilities Provider, Network Service Provider, Applications Service Provider, or Content Applications Service Provider who makes a written request for such access, on reasonable terms and conditions⁷; and
- (ii) Such access shall be of at least the same or more favourable technical standard and quality as that provided on the access provider's Network Facilities or Network Services and shall be on an equitable and non-discriminatory basis.⁸

(e) Access agreements

The CMA recognises that access seekers and access providers should negotiate the terms and conditions of access (where possible), but subject to the SAOs.⁹

⁵ For example, Section 228 of the CMA.

⁶ Section 228 of the CMA.

⁷ Section 149 of the CMA.

⁸ Subsection 149(2) of the CMA.

⁹ Section 150 of the CMA as read with section 149 of the CMA.

(f) Access undertakings

In Malaysia, a person may provide an undertaking to the Commission in respect of any matter, which may be the subject of a voluntary industry code, or in respect of any matter contemplated by the CMA.¹⁰

In addition, and more specifically, a licensee may provide an access undertaking. An access undertaking may specify more than one set of terms and conditions for access to a particular Network Facility or Network Service listed in the Access List.¹¹ The Commission shall not register an undertaking unless it is satisfied that the undertaking is consistent with the SAOs.¹²

(g) Access code

The CMA provides that the Commission shall make a written request to the access forum to prepare an access code.¹³ An access code is required to provide model terms and conditions for compliance with the SAOs.

(h) Determination of mandatory standard

The Commission may determine a mandatory standard on access if it is subject to a direction from the Minister that requires it to do so¹⁴. As outlined in the preface to this Public Inquiry Paper, such a direction was received by the Commission on 18 March 2003 (*Ministerial Direction to Determine a Mandatory Standard on Access, Direction No 2 of 2003*).

(i) Resolution of access disputes

The Commission may publish guidelines setting out the principles and procedures which it may take into account in resolving disputes.¹⁵

Specific to the access regime, a party to a dispute over compliance with the SAOs may notify the Commission of the dispute. A party

¹⁰ Section 110 of the CMA.

¹¹ Section 155 of the CMA.

¹² Section 156 of the CMA.

¹³ Subsection 153(1) of the CMA.

¹⁴ Subsection 104(2) of the CMA.

¹⁵ Section 85 of the CMA.

seeking to exercise its rights under the SAOs, or a party who has notified the Commission of a dispute, may at any time withdraw the notification.¹⁶

3.4 Purpose of access regulation

3.4.1 In general terms, regulatory intervention is necessary to facilitate an orderly, efficient and successful transition from a monopolistic to a competitive environment. In terms of the type of regulatory intervention that is relied upon to achieve this, sector-specific regulations are often required due to the unique economic features of communications and multimedia markets. These include: large sunk costs in the form of the substantial investments required in network infrastructure (which are “sunk” since they cannot be recovered); large economies of scale, scope and density; the dominant operator’s control of bottleneck facilities and the scope for cross-market leverage.

3.4.2 Recognising that these factors are not necessarily unique to the communications and multimedia markets, they nonetheless tend to justify regulatory intervention that is *specific* to communications and multimedia markets. As the United Kingdom telecommunications regulator, OFTEL, has said:

“The inherent characteristics of electronic media and communications mean that some market failures are endemic – ie. a competitive market would not address these failures. Such failures are not necessarily the result of firms’ abusive behaviour and are therefore not caught by [general competition law]. They arise out of the nature of the industries in question. ... Some rules beyond general competition law are necessary to prevent the residual powers and advantages of incumbents being exploited in a way which frustrates the development of competition or unfairly exploits the consumer.”¹⁷

3.4.3 Ensuring equitable and non-discriminatory access arrangement is also a key regulatory objective for any communications, multimedia or competition regulator. In the absence of adequate access regulation, a network operator,

¹⁶ Section 151 of the CMA.

¹⁷ OFTEL, *Beyond the Telephone, the Television and the PC – III*, OFTEL’s Second Submission to the Inquiry into Audiovisual Communications and the Regulation of Broadcasting, March 1998, paragraphs 4.24 and 4.34-4.35. Note that the existing functions of OFTEL are in the process of being transferred to a new merged communications and broadcasting regulator, OFCOM.

whether a dominant operator within the market or not, can restrict access in order to eliminate or reduce competition in related markets. This can affect a consumer's ability to enjoy the best prices, innovations or range of choices for telecommunications services. Further, dominant operators within a market are in an even stronger position to affect access, and therefore competition, in this way. The regulation of access to Network Services and Network Facilities (with specific rules addressing anti-competitive forms of conduct by dominant players) is therefore critical to maintaining competition in such markets.

3.5 Role of a standard dealing with access

3.5.1 A number of advantages are conventionally attributed to introducing a Standard that deals with access, and which takes the place of or guides bilateral negotiations on access. These advantages are:

- (a) efficiency;
- (b) transparency;
- (c) fairness;
- (d) facilitation of market entry; and
- (e) reduction of administrative burden on the regulator.

3.5.2 A Standard dealing with access is, at its most basic, a substitute for bilateral negotiations between parties. On the other hand it can also act as a substitute for legislation.

3.5.3 To the extent that it is a substitute for legislation, a Standard must be forward-looking, attempting to anticipate the diverse circumstances in which it will be invoked. A Standard, however, is less formal than legislation and more easily amended to remedy any oversight or accommodate industry developments. These virtues are often encapsulated as "transparency" and "flexibility".

3.5.4 To the extent that a Standard is a substitute for bilateral negotiations, it is intended to obviate the need for extensive negotiations between the parties. This pre-emptive role of a Standard may be justified on two grounds.

- (a) First, a Standard may eliminate the need for economically wasteful duplication of efforts in multiple bilateral transactions. If A and B must

undertake multiple rounds of negotiations to reach an outcome that is the same as or similar to that achieved by B and C, B and D, E and F, et cetera, the total costs associated with attaining those outcomes may be lessened by codifying their common elements.

- (b) Secondly, a Standard may be justified on the basis that it is conducive to outcomes approximating those that would be achieved under competitive market conditions. That is, the contents of a Standard encourage or require the parties to implement access arrangements as if they were equals, notwithstanding that one party (typically the access provider) will enjoy significant competitive advantages (eg: deeper pockets, information asymmetries) relative to the other. By avoiding the exercise of competitive advantage in the negotiation of access terms, a Standard may assist to 'level the playing field' between a dominant operator and a non-dominant operator, encouraging market entry. These are "efficiency" and "fairness" grounds.

3.5.5 From the perspective of the Commission, certain efficiencies may also be realised by including elaborations on SAOs in a Standard. The administrative burden on the regulator of developing and implementing a Standard may be less than that of mediating, arbitrating or being otherwise involved in the conclusion of multiple bilateral access arrangements or the resolution of access disputes arising out of such arrangements. Such economies result to the extent that common issues are dealt with 'once and for all' rather than repeatedly, (ie on a case-by-case basis). Actual savings on this basis will largely depend on the appropriateness and degree of acceptance of the relevant Standard.

3.6 The key dimensions of the Standard

3.6.1 In determining the design of the Standard, certain key dimensions must be considered, including:

- (a) scope (ie: what facilities or services does it apply to?);
- (b) breadth of application (ie: who is subject to the Standard, eg: all operators or only dominant operators? who can seek access under it?);
- (c) specificity (ie: general principles or detailed provisions?); and

(d) subject matter (ie: what matters does the Standard deal with?).

3.6.2 The development of the Standard will require that decisions be made in respect of several interdependent design variables:

(a) how broadly the Standard should apply to diverse facilities and services;

(b) how broadly (or narrowly) the Standard should apply in respect of diverse access providers and access seekers; and

(c) which matters to deal with specifically and which to deal with generally or not at all.

3.6.3 As will be seen in Part II of this Public Inquiry Paper, in the design of the draft Standard, the Commission has included provisions to address these complex issues. The Commission has endeavoured to strike a multi-dimensional balance between the right degree of detail on the one hand, leaving sufficient scope for negotiation on the other and balanced with the scope of the subject matter to which - and the operators to whom - the Standard will apply.

CHAPTER 4 : OUTLINE OF THE KEY ISSUES AND MATERIAL COVERED IN THE STANDARD

- 4.1 This Chapter contains an outline of the key issues and matters on which the Commission seeks public comment. Certain questions pertaining to these matters are set out below.
- 4.2 However, it should be noted that this Chapter 4 of Part I of the Public Inquiry Paper is not an exhaustive list of the matters raised in the draft Standard (as contained in Part II of this Public Inquiry Paper).
- 4.3 In regard to the matters set out below in this Chapter 4 of Part I of the Public Inquiry Paper, reference should also be had to the contents of the draft Standard in Part II of the Public Inquiry Paper.
- 4.4 The Commission welcomes any submissions on the contents of the draft Standard.
- 4.5 The Commission welcomes any additional comments and suggestions on relevant material that the Commission should consider for inclusion in the (final) Standard.

4.6 The scope and application of the Standard

- 4.6.1 How broadly (or narrowly) should the Standard apply to diverse facilities and services? (See subsections 3.1, 3.2 and 3.3 of the draft Standard).
- 4.6.2 Should the Standard deal with all of the Network Facilities, Network Services and other services specified on the Access List? Is there a basis for excluding any of these services from the application of the Standard?
- 4.6.3 How broadly (or narrowly) should the Standard apply in respect of diverse access providers and access seekers? (See subsection 3.2 of the draft Standard).
- 4.6.4 How should the Standard ensure that non-licensed facilities and service providers are covered by the Standard, if at all? (See the definition of Access Provider and Access Seeker in subsection 1.2 of the draft Standard).
- 4.6.5 The Commission is aware that the scope of the draft Standard is currently limited to Network Services listed in the *Commission Determination on the Access List, Determination No. 1 of 2001*. The Commission, welcomes views on whether the

scope of this Standard should be expanded to address the following matters:

- (a) the manner in which and the procedures which support Equal Access as ancillary issues to the Equal Access listed service; (See subsection 5.12 of the draft Standard).
- (b) domestic roaming; (This is not dealt with in the draft Standard).
- (c) number portability; (This is not dealt with in the draft Standard).
- (d) the terms on which physical co-location is provided; (See subsection 5.9 of the draft Standard).
- (e) other relevant services.

4.7 Scope of the Standard in relation to dominance

4.7.1 Should the Standard give expression to differing levels of bargaining power which might exist between regulated entities, and include provisions to take account of the effects that the exercise of market power by dominant operators might have on competition? (See subsection 3.3 of the draft Standard).

4.7.2 Should the Standard thus include a base level of regulation that applies to all operators within a market (whether they are dominant or not), and additional rules which only apply to dominant operators? (See section 5 of the draft Standard generally and the content obligations in subsection 5.5 of the draft Standard).

4.7.3 Specifically in relation to the draft Standard in Part II, public comment is sought on whether the draft Standard has drawn appropriate distinctions between the obligations applicable to all operators and those obligations only applicable to dominant operators? (See section 5 of the draft Standard generally and the content obligations in subsection 5.5 of the draft Standard). More specifically, are there any matters set out in the draft Standard which are applicable to all operators which should only apply to dominant operators and vice versa?

4.8 General principles for content of the Standard

4.8.1 Should the Standard expand on the SAOs as contained in the CMA? (See subsection 4.1 of the draft Standard).

4.8.2 For example, should the Standard include detail relating to:

- (a) the types of activities that will be subject to the SAOs (for example, ordering, access to billing and operational support systems, fault reporting and fault information, for, see subsection 5.7 and subsection 5.15 of the draft Standard); and
- (b) examples of the basis on which an access provider may refuse a request for access to listed access services because it is unreasonable (for example capacity limitations, previous failure by the access seeker to comply with terms and conditions, see subsections 4.1.3, 5.4.10, 5.4.11 and 5.4.12 of the draft Standard)?

4.8.3 Should the Standard expand the SAOs to include customer principles in the Standard, for example a rule that does not permit an access provider to claim an access seeker's customers as its own? (See subsection 4.3. of the draft Standard).

4.9 Access obligations contained in the Standard

4.9.1 The draft Standard imposes certain obligations on all operators concerning a variety of access issues.

4.9.2 The Standard sets out these obligations under the following headings:

- (a) disclosure obligations (see subsection 5.3 of the draft Standard), which include:
 - (i) an obligation to prepare and maintain an access reference document (**ARD**) containing billing information, technical information, etc;
 - (ii) availability of an ARD;

- (iii) procedures following acceptance of an ARD; and
 - (iv) amendment of an ARD;
- (b) negotiation obligations (see subsection 5.4 of the draft Standard), which include:
 - (i) a duty of good faith;
 - (ii) a duty of confidentiality;
 - (iii) legitimate use of intellectual property; and
 - (iv) timing obligations;
- (c) content obligations (see subsection 5.5 of the draft Standard), which include:
 - (i) forecasting obligations (see subsection 5.6 of the draft Standard);
 - (ii) ordering and provisioning obligations (see subsection 5.7 of the draft Standard);
 - (iii) network conditioning obligations (see subsection 5.8 of the draft Standard);
 - (iv) interconnect and Point of Interface procedures (see subsection 5.9 of the draft Standard);
 - (v) decommissioning obligations (see subsection 5.10 of the draft Standard);
 - (vi) network change obligations (see subsection 5.11 of the draft Standard);
 - (vii) equal access obligations (see subsection 5.12 of the draft Standard);
 - (viii) facilities access and co-location obligations (see subsection 5.13 of the draft Standard);

- (ix) billing and settlement obligations (see subsection 5.14 of the draft Standard);
- (x) operations and maintenance (see subsection 5.15 of the draft Standard);
- (xi) technical obligations (see subsection 5.16 of the draft Standard);
- (xii) term, suspension and termination obligations (see subsection 5.17 of the draft Standard); and
- (xiii) legal boilerplate obligations (see subsection 5.18 of the draft Standard).

4.9.3 Public comment is sought on whether or not the draft Standard:

- (a) covers sufficient matters under these headings; and
- (b) covers the matters in a sufficient degree of detail.

4.9.4 In considering the questions in 4.9.3 above, public comment is sought on whether or not the draft Standard has retained sufficient flexibility between providing detailed terms and conditions for access and leaving sufficient scope for negotiation between operators.

4.9.5 As referred to in 4.7.3 above, public comment is sought on whether or not the draft Standard has properly drawn the dividing line between those obligations applicable to all operators and those only applicable to dominant operators.

4.9.6 The Commission welcomes any submissions on what subject matter of access regulation should be applicable to all operators and what subject matter should be applicable to dominant operators only.

4.9.7 In respect of the time periods relating to:

- (a) ordering and provisioning obligations (see subsection 5.7.14 of the draft Standard);

(b) network change obligations (see paragraph 5.11.3(b) of the draft Standard); and

(c) operation and maintenance obligations (see subsection 5.15.13 of the draft Standard);

the Commission seeks specific submissions on the adequacy of these time periods, particularly as they relate to the delivery of services, notice periods for network change and fault rectification targets respectively.

4.9.8 The Commission also seeks specific submissions on whether or not the Standard should deal with technical matters in any greater detail than that which it already contains (see subsection 5.16 of the draft Standard).

4.9.9 Should the Standard, generally, contain more details regarding quality of service and remedies for failing to meet quality of service standards? In particular, should an additional subsection 5.16.9 be inserted into the Standard?

4.9.10 The Commission seeks specific submissions on the maximum amount of comprehensive liability insurance that may be required by an Access Provider who is a Dominant Operator (see paragraph 5.3.9(b)).

4.10 Terms and conditions

4.10.1 Should the terms and conditions set out in the Standard only specify key access issues in sufficient detail to provide meaningful guidance to parties to expeditiously and efficiently negotiate, or should they include detailed legal terms and conditions in a precedent format?

4.11 Administration of the Standard and compliance with the Standard

4.1.11 Public comment is sought on any relevant issue that might arise from the matters set out in section 6 of the draft Standard, including the enforcement and implementation of the Standard and how compliance with the Standard will be reviewed (see subsections 6.1, 6.2 and 6.3 of the draft Standard).

4.12 Effect on existing arrangements

4.12.1 What would be a reasonable period of grace for the operators to renegotiate their existing interconnection agreements to enable them to comply with the Standard?

4.13 Review and amendment provisions

4.13.1 The draft Standard contains provisions regarding the review and amendment of the Standard (See subsection 6.5 of the draft Standard).

4.13.2 Should the Standard include review provisions which encompass regular reviews as well as reviews triggered by certain events?

1.6 Dispute resolution procedures

1.6.1 Should the Standard contain a section dealing with Dispute Resolution Procedures (See Annexure A of the draft Standard).

1.6.2 Public comment is sought on the contents of the Dispute Resolution Procedures in Annexure A of the draft Standard, especially whether or not inter-party working groups, an interconnect steering group and subject specific procedures for billing and technical disputes should be included.

CHAPTER 5 : THE PUBLIC INQUIRY PROCESS

- 5.1 The *Ministerial Direction to Determine a Mandatory Standard on Access, Direction No 2 of 2003* requires the Commission to conduct a public inquiry. Section 60 of the CMA provides that Public Inquiry is to be conducted as and when the Commission thinks fit. The CMA also acknowledges that a Public Inquiry may be conducted in private or public (see sections 61 and 62).
- 5.2 The Commission has decided that it will conduct the Public Inquiry by publishing this Public Inquiry Paper and by holding a public hearing. This process will enable the Commission to collect both oral and written submissions on the content of the draft Standard.
- 5.3 The Public Inquiry Paper is required to be open for public comment for a period of not less than 45 days, access providers, access seekers and other interested persons (including members of the public) are invited to make submissions to the Commission about the Public Inquiry Paper. During that period the Commission will also conduct the public hearing.
- 5.4 Pursuant to section 65, the Commission is thereafter obliged to publish a report of its findings as a result of the Public Inquiry within 30 days of the conclusion of the Public Inquiry. The report will then be registered and made available to the public.
- 5.5 Finally, within 45 days from the conclusion of the Public Inquiry, the Commission shall determine the Standard based on report published.
- 5.6 There will be one public hearing held on 6 June 2003 at Bilik Labuan, Level 5, Putra World Trade Centre as part of a feedback gathering process for this Public Inquiry. Members of the public are welcomed to attend this dialogue.
- 5.7 Indicative time frame for the process is as follows:

No	Action	Date
1	Ministerial Direction on Mandatory Standard	18 March 2003
2	Publication of Public Inquiry Paper	30 April 2003
3	Public hearing	6 June 2003
4	Close of feedback on Public Inquiry (45 days)	30 June 2003
5	Report on Public Inquiry (within 30 days of the conclusion of the Public Inquiry)	30 July 2003
6	Determination of Standard by the Commission	14 August 2003

	(within 45 days of the conclusion of Public Inquiry)	
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PART II
DRAFT MANDATORY STANDARD
ON ACCESS

CHAPTER 1 : PRELIMINARY

1.1 Commencement

1.1.1 This Standard:

- (a) comes into force on the date of registration by the Commission, or such later date or dates (where parts of the Standard commence on different dates) as the Commission may specify; and
- (b) shall remain in force until revoked.

1.2 Definition

1.2.1 This subsection 1.2 defines some of the terms used in this Standard, and subsection 1.3 sets out the rules of interpretation that apply to this Standard. In this Standard the following words have the meanings set out in this subsection 1.2 unless the contrary intention appears:

1.2.2 **Access Agreement** means an agreement entered into between Operators whereby the Access Provider provides Access to an Access Seeker in accordance with the terms contained in such agreement and which may be registered with the Commission in accordance with the CMA;

1.2.3 **Access Provider** means:

- (a) a Network Facilities Provider who owns network facilities; or
- (b) a Network Service Provider who provides network services, listed in the Access List; or
- (c) a holder of a registered licence under section 278 of the CMA; and
- (d) for the avoidance of doubt includes any of the persons referred to in paragraph 1.2.3 (a) or 1.2.3 (b) above, whether or not they are holders of any Licence granted under the CMA;

1.2.4 **Access Reference Document** means a document of terms and conditions, as described in subsection 5.3.2 of this Standard;

- 1.2.5 **Access Request** means a request for access made by an Access Seeker under subsection 5.4 of this Standard and containing the information contained in subsection 5.4.6 of this Standard;
- 1.2.6 **Access Seeker** means a Network Facilities Provider, a Network Service Provider, an Applications Service Provider, or a Content Applications Service Provider who makes a written request for access to Facilities or Services, listed in the Access List; including a holder of a registered licence under section 278 of the CMA;
- 1.2.7 **ALD** means the *Commission Determination on Access List, Determination No. 1 of 2001*;
- 1.2.8 **Billing Period** means the period over which the supply of access to Network Services or Network Facilities is measured for the purposes of billing as contemplated in subsection 5.14.3, which shall be no more than thirty-one (31) days unless otherwise agreed between the parties;
- 1.2.9 **Business Day** means a day other than a Saturday, Sunday or a day which is lawfully observed as a national public holiday on the same day around Malaysia;
- 1.2.10 **CLI** means calling line identification;
- 1.2.11 **CMA** means the Communications and Multimedia Act 1998 [Act 588];
- 1.2.12 **Capacity Allocation Policy** has the meaning in subsection 5.7.31 of this Standard;
- 1.2.13 **Carrier Selection Code** means the short code prefixed or to be prefixed to relevant calls (national or international) which indicates the Customer's preference for the routing of the originating call;
- 1.2.14 **Commission Act** means the Malaysian Communications and Multimedia Commission Act 1988, [Act 589];
- 1.2.15 **Customer** means, in relation to an Operator, a person having a contractual relationship with that Operator for the provision of Services by means of that Operator's Network Facilities or Network Services or both;

- 1.2.16 **Confidential Information** means all information, know-how, ideas, concepts, technology, manufacturing processes, industrial, marketing and commercial knowledge of a confidential nature (whether in tangible or intangible form) relating to or developed in connection with or in support of the business of the relevant Operator (as the case may be) but does not include:
- (a) information which is or becomes part of the public domain (other than through any breach of this agreement); or
 - (b) information rightfully received by another person from a third person without a duty of confidentiality being owed by the other person to the third person, except where the other person has knowledge that the third person has obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the first mentioned person; or
 - (c) information which has been independently developed by another person;
- 1.2.17 **Content obligations** means those obligations set out in subsection 5.5.1 of this Standard;
- 1.2.18 **Disclosure obligations** means those obligations set out in subsection 5.3 of this Standard;
- 1.2.19 **Dispute Resolution or Dispute Resolution Procedures** refers to the procedures outlined in Annexure A of this Standard;
- 1.2.20 **Dominant Operator** means an Operator who is determined to be in a dominant position by the Commission in accordance with the provisions of section 137 of the CMA;
- 1.2.21 **Effective Date** means the date on which this Standard comes into effect as specified in subsection 1.1.1 of this Standard;
- 1.2.22 **Equal Access** has the meaning described in subsection 5.12.1 of this Standard;
- 1.2.23 **Equipment** means any equipment, whether hardware or software, or device, used within a Network;

- 1.2.24 **Far end handover** means the delivery of calls to a point of interconnection nearest to the location of the called number;
- 1.2.25 **Fixed Access Lines** means the lines permitting the Customer to connect to the Access Provider's Network Facility for the purposes of Equal Access;
- 1.2.26 **Fixed Network** means the Network Facilities comprising the public switched telephone network for the provision of communications;
- 1.2.27 **Forecast** refers to a forecast made by the Access Seeker referred to in subsection 5.6 of this Standard;
- 1.2.26 **Forecast Information** has the meaning in subsection 5.6.3 of this Standard;
- 1.2.27 **Forecast Request** means a request by the Access Provider for forecast information from the Access Seeker, as described in subsection 5.6.3 of this Standard;
- 1.2.28 **Interconnection link** means a physical link connecting the Networks of two Operators;
- 1.2.29 **Intellectual Property** means all rights conferred under statute, common law and equity in and in relation to trade marks, trade names, logos and get up, inventions, patents, designs, copyright, circuit layouts, Confidential Information, know-how and trade secrets and all rights and interests in them or licences to use any of them;
- 1.2.30 **Invoice** means the invoice for amounts due in respect of the supply of Network Services or Network Facilities during a Billing Period as contemplated in subsection 5.14.1 of this Standard;
- 1.2.31 **Line Activation** means the network capability necessary to permit the Customer of one Operator to utilise the Equal Access Services of another Operator;
- 1.2.32 **Near End handover** means the delivery of calls to a point of interconnection nearest to the location of the calling number;
- 1.2.33 **Negotiation obligations** means those obligations set out in subsection 5.4 of this Standard;

- 1.2.34 **Network** means a system, or series of systems, that carries or is capable of carrying communications by means of guided or unguided electromagnetic energy or both;
- 1.2.35 **Network Change** means a change to an Operator's network which requires a change to be made to the other Party's Network to allow the continuance of the end-to-end conveyance of calls across a Point of Interface;
- 1.2.36 **Network Conditioning** means the conditioning, equipping and installation of equipment in a Network to enable the provision of Services;
- 1.2.37 **New Fixed Access Lines** means the additional lines permitting Customers to connect to the Access Provider's Network Facility, as may be added from time to time;
- 1.2.38 **Non-Discriminatory** has the same meaning as that set out in subsection 4.1.6 of this Standard;
- 1.2.39 **Notice of Receipt** refers to the acknowledgment of receipt of the order from an Access Seeker, as described in subsections 5.7.5 and 5.7.6 of the Standard;
- 1.2.40 **Operator** means a Network Facilities Provider, a Network Services Provider, an Application Service Provider or a Content Application Service Provider (as the context requires) who is an Access Provider or an Access Seeker (as the context requires);
- 1.2.41 **Order** means the order which an Access Seeker must give to an Access Provider to obtain access to Network Services or Network Facilities, as described in subsection 5.7.2 of this Standard;
- 1.2.42 **Party** means the Access Seeker or Access Provider, as the context requires;
- 1.2.43 **POI** has the same meaning given to it in the ALD;
- 1.2.44 **POP** has the same meaning given to it in the ALD;
- 1.2.45 **Point of Interface** means a point at or between Network Facilities which demarcates the network of an Access Provider and the network of an Access Seeker and is the point at which a communication is transferred between those Network Facilities and includes POI and POP;

- 1.2.46 **Rejection Notice** refers to the notice of rejection made by an Access Provider in response to an Access Seeker's Forecast as described in subsection 5.6.9 of this Standard;
- 1.2.47 **Relevant Change** means the proposed network changes referred to in subsection 5.11.2 of this Standard;
- 1.2.48 **RPI March 2001** means the Report on a Public Inquiry on Access List Determination under section 55 of the CMA;
- 1.2.49 **Services** mean Network Services or Applications Services;
- 1.2.50 **Standard** means this mandatory standard, as determined under Chapter 10 of Part V of the CMA;
- 1.2.51 **Standard Access Obligations** or **SAOs** means the obligations which relate to access as referred to in section 149 of the CMA; and
- 1.2.52 **Studies** mean a desk and field study that may be conducted by an Access Provider under subsection 5.7 of this Standard.

1.3 Interpretation

- 1.3.1 In this Standard, unless the context otherwise requires -
- (a) the singular includes the plural and vice versa; and
 - (b) a reference to an agreement, this Standard or another instrument includes any variation or replacement of either of them; and
 - (c) a reference to an annexure or schedule is a reference to an annexure or schedule to this Standard and a reference to this Standard includes an annexure or schedule; and
 - (d) a reference to a section or clause is a reference to a section or clause of this Standard and a reference to a paragraph is a reference to a paragraph of this Standard; and
 - (e) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and

- (f) the word person includes a firm, body corporate, unincorporated association or an authority; and
- (g) a reference to a person includes the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation), and assigns; and
- (h) all monetary amounts are expressed in Malaysian currency; and
- (i) if the day on which the payment of money falls due is not a Business Day, the due date shall be deemed to be the next Business Day;
- (k) a reference to a third person is a reference to a person who is not the Access Provider or the Access Seeker; and
- (l) a term or expression starting with a capital letter:
 - (A) which is defined in section 1.2, has the meaning given to it in section 1.2; and
 - (B) which is defined in the body of this Standard, has the meaning so given to it in the body of the Standard unless the context indicates otherwise; and
 - (C) which is defined in the CMA but is not defined in section 1.2, has the same meaning as in the CMA.

A definition in the CMA shall prevail over a definition in the Standard to the extent of any inconsistency.

1.4 Headings

Headings are included for convenience and do not affect the interpretation of these terms and conditions.

1.5 Inconsistency

1.5.1 This Standard shall have the priority in relation to the following documents as set out below, with the former prevailing over the latter:

- (a) the CMA;
- (b) Ministerial directions, declarations and determinations;

- (c) this Standard;
- (d) a Voluntary Industry Code or an undertaking referred to in section 110 of the CMA; and
- (e) an Access Agreement registered under section 150 of the CMA.

CHAPTER 2 : BACKGROUND

2.1 Legislative basis for the Standard

- 2.1.1. This Standard is called the Mandatory Standard on Access.
- 2.1.2. This Standard is created by the Malaysian Communications and Multimedia Commission, established under the CMA.
- 2.1.3. The Commission is empowered to create this Standard following the issue of the *Ministerial Direction to Determine a Mandatory Standard on Access, Direction No 2 of 2003 (Direction)*.
- 2.1.4. Subsection 55(6) of the CMA provides that any determination by the Commission “shall be consistent with the objects of, and any requirements provided in the CMA which are relevant to the particular matter or activity.
- 2.1.5. The Commission has been cognisant of the objects of the CMA in determining this Standard including without limitation:
- (a) Promotion of the national policy objectives for the communications and multimedia industry;
 - (b) Establishment of a licensing and regulatory framework in support of national policy objectives for the communications and multimedia industry; and
 - (c) Establishment of the powers and procedures for the administration of the CMA.
- 2.1.6 The Commission has also been cognisant of the national policy objectives for the communications and multimedia industry, including without limitation:
- (a) to regulate for the long-term benefit of the end user; and
 - (b) to ensure an equitable provision of affordable services over ubiquitous national infrastructure.
- 2.1.7 In accordance with the Direction, the Commission followed the public inquiry procedures prescribed in Chapter 3, Part V of the CMA in the course of developing this Standard.

2.2 Structure

2.2.1 This Standard is divided into:

- (a) Major sections of the Standard, described as Sections (eg Section 1: Preliminary);
- (b) Parts within each section, described as Subsections (i.e. subsection 1.2 and subsection 1.2.1);
- (c) Paragraphs within subsections, described as Paragraphs (i.e. paragraph 1.2.3(a)).

2.3 Outline of contents of the Standard

2.3.1 The Sections of the Standard deal with the following issues:

- (a) Section 1 (**Preliminary**) sets out a glossary of terms used in the Standard, which are in addition to the terms defined in the CMA.
- (b) Section 2 (**Background**) provides an introduction and background to this Standard.
- (c) Section 3 (**Scope**) sets out the scope of the Standard in terms of the services to be covered and the persons who are subject to the Standard.
- (d) Section 4 (**General principles**) sets out the general principles applicable to access regulation in Malaysia, including principles implementing the standard access obligations (**SAOs**) contained in section 149 of the CMA;
- (e) Section 5 Part A (**Operator access obligations**) sets out the obligations that apply to all Operators concerning various access issues. These obligations build upon the basic obligations or standard access obligations set out in the CMA. The obligations will cover areas which include:
 - i Negotiation Obligations;
 - ii Disclosure Obligations; and

- iii Content Obligations including but not limited to:
 - A. General obligations;
 - B. Forecasting Obligations;
 - C. Ordering and Provisioning Obligations;
 - D. Network Conditioning Obligations;
 - E. Point of Interface Procedures;
 - F. Decommissioning Obligations;
 - G. Network Changes Obligations;
 - H. Equal Access Obligations;
 - I. Network Facilities Access and Co-location Obligations;
 - J. Billing and Settlement Obligations;
 - K. Operations and Maintenance Obligations;
 - L. Technical Obligations;
 - M. Term, Suspension and Termination Obligations; and
 - N. Legal Boilerplate Obligations.

(f) Section 5 Part B (**Dominant operator obligations**) sets out the additional obligations which apply to Dominant Operators only.

(g) Section 6 (**Standard administration and compliance**) sets out the administrative and compliance matters that are applicable to this Standard, including:

- i. Enforcement of the Standard;
- ii Implementation of the Standard;

- iii Transitional measures; and
- iv Review of the Standard.

2.4 Rate Methodologies

- 2.4.1. The Commission, and predecessor regulatory bodies, have undertaken considerable work in determining rate methodologies and price for a range of access arrangements.
- 2.4.2. The ALD and RPI March 2001 expressed that charging arrangements for relevant interconnection or access should be oriented towards cost.
- 2.4.3. This broad statement does not reflect the complexity of the process of determining rate methodologies and setting cost oriented price guidelines or a suggested range of rates for interconnection and access arrangements. A generalised “one-size fits all” approach is inappropriate to the range of facilities and services covered by the Access List.
- 2.4.4. The Commission has also undertaken a separate modelling and analysis of prices of access and public input will be sought. The Commission is cognisant that the requirements in this Standard should be sufficiently flexible to allow parties to reach agreement on differing price and differing non-price terms and conditions. This flexibility is recognised in this Standard.

2.5 Terms and conditions

- 2.5.1. This Standard sets out indicative model terms and conditions concerning access. In doing so, the Commission's objective is to identify key interconnection and access issues in sufficient detail to provide meaningful guidance to parties in expeditiously and efficiently negotiating access arrangements.
- 2.5.2. The Commission has not included detailed legal terms and conditions in a precedent format because the Commission is concerned to avoid adopting an overly-prescriptive approach which might result in undesirable inflexibility.

CHAPTER 3: SCOPE

3.1 TYPES OF FACILITIES AND SERVICES COVERED BY THE STANDARD

3.1.1 This Standard deals with Access to Network Facilities and Network Services included in the Access List. The Standard aims to be sufficiently flexible to deal with change as it occurs, and includes review provisions and transitional provisions (See subsection 6.4 and subsection 6.5).

3.2 APPLICATION OF THE STANDARD

3.2.1 Any of the following persons may be directed to comply with the Standard under the CMA by the Commission:

- (a) Network Facilities Providers, in their capacity as Access Providers or Access Seekers;
- (b) Network Services Providers, in their capacity as Access Providers or Access Seekers;
- (c) Applications Services Providers, in their capacity as Access Seekers;
- (d) Content Applications Service Providers, in their capacity as Access Seekers.

3.2.2 Generally, and consistent with the approach of the access regime established by the CMA, the Standard confers the same rights and applies the same obligations on persons listed in subsection 3.2.1 and as between a particular class of person (eg Network Facilities Providers), making no distinction between large or small providers nor does it distinguish between established or new providers. However, in some places the Standard applies obligations only to Dominant Operators as described in subsection 3.3.

3.2.3 The Standard shall only apply in respect of the wholesale relationship between Operators in relation to access to Network Facilities and Network Services. The Commission encourages all Operators to treat the provisions of the Standard, where relevant, as guidelines for any other wholesale or retail access arrangements that may be entered into.

3.2.4 In addition, the Commission may target its regulation where it is necessary to satisfy the objects of the Standard. This includes the ability to distinguish between dominant and non-dominant operators.

3.3 DOMINANT AND NON-DOMINANT OPERATORS

3.3.1 To achieve equitable and non-discriminatory access and interconnection arrangements, the Commission seeks to address the effects that the exercise of market power by Dominant and non-dominant Operators may have on competition, through the exercise of its powers under the CMA. Under section 137 of the CMA, the Commission may determine that a licensee is in a dominant position in a communications market, and under section 138 of the CMA, the Commission may issue guidelines about how it will apply the “dominance test” to a licensee.

3.3.2 On the basis set out in subsection 3.3.1, the Standard implements a base set of rules which apply to all Operators that seek access or interconnection – regardless of their level of market power – and additional rules which apply specifically to Dominant Operators only.

3.3.3 In some cases, the Standard subjects Dominant Operators who are Network Facilities Providers or Network Services Providers to more rigorous regulation than other Operators in relation to the provision of access to Network Facilities and Network Services on the Access List.

3.3.4 The additional regulation of only a sub-set of Operators (who are Dominant Operators) to whom access obligations apply under the CMA does not affect all relevant Operators’ rights and obligations under the CMA with respect to access. While the Standard does distinguish, in some cases, between the obligations imposed on non-dominant Operators as opposed to those imposed on Dominant Operators, the Standard cannot, and the Commission does not have the power to, undermine or detract from all relevant Operators’ rights and obligations under the CMA with respect to access.

CHAPTER 4 : GENERAL PRINCIPLES

4.1 PRINCIPLES OF ACCESS TO NETWORK SERVICES AND NETWORK FACILITIES ON THE ACCESS LIST

4.1.1 **Standard Access Obligations:** In accordance with the CMA and subject to exemptions determined by the Minister, all Network Facilities Providers and Network Services Providers shall provide access on reasonable terms and conditions to the Network Facilities and Network Services listed in the Access List to any other:

- (a) Network Facilities Provider;
- (b) Network Services Provider;
- (c) Applications Services Provider; or
- (d) Content Applications Services Provider,

who makes a written request to the relevant Access Provider for Access.

4.1.2 **Reasonableness:** An Access Provider may refuse a request if:

- (a) supply of the relevant listed Network Facility or Network Service would not be reasonable (see subsection 4.1.3); or
- (b) supply of the relevant listed Network Facility or Network Service would be reasonable, but the terms and conditions requested by the Access Seeker are not reasonable (see subsection 4.1.4).

4.1.3 **Unreasonable request:** Although not prescribed by the CMA, a request for access to a listed Network Facility or Network Service may not be reasonable if:

- (a) the Access Provider does not currently supply or provide access to the Network Facility or Network Service to itself or to any third parties; or
- (b) one or more of the criteria in subsection 5.4.12 of the Standard are satisfied.

For clarification, this Standard does not intend or attempt to narrow the grounds of refusal upon which a party may rely under the CMA.

4.1.4 **Unreasonable terms:** The CMA provides for several mechanisms to determine terms and conditions if the parties are unable to reach agreement on the terms and conditions of supply, including dispute resolution by the Commission.

4.1.5 **Non-discrimination:** As required by subsection 149(2) of the CMA, an Access Provider must provide Access to those Network Facilities or Network Services specified in the Access List, and such Access must be:

- (a) of at least the same or equally favourable technical standard and quality as the technical standard and quality provided on the Access Provider's Network Facilities or Network Services; and
- (b) on an equitable and a non-discriminatory basis.

4.1.6 **Meaning of non-discriminatory:** For the purposes of this Standard, the term "non-discriminatory" requires comparison of:

- (a) the basis on which a thing is provided by the Access Provider to an Access Seeker; with
- (b) the basis on which that thing is provided by the Access Provider to itself and to other Access Seekers who are similarly situated.

4.2 APPLICATION OF NON-DISCRIMINATION PRINCIPLE

4.2.1 **Examples:** The non-discrimination principle contained in subsection 149(2) of the CMA applies to, amongst other things:

- (a) processing of applications for Access;
- (b) acceptance or refusal of Access Requests;
- (c) provisioning of Network Services or Network Facilities;
- (d) allocation of constrained capacity;
- (e) fault reporting and fault rectification;

- (f) network conditioning; and
- (g) allocation of space at exchanges.

4.2.2 **Non-standard performance:** Nothing in this Standard limits an Access Seeker's ability to request access to a Network Facility or Network Service that is either superior or inferior (eg as to technical standards and quality) to that which an Access Provider provides to itself.

4.3 CUSTOMER PRINCIPLES

4.3.1 **Recognition of principle:** All Operators must recognise and act consistently with the Customer relationship principles referred to in subsection 4.3.2.

4.3.2 Customer relationship principles:

- (a) A Customer will be regarded as a Customer of an Operator when the Customer utilises a Service provided to that customer by the Operator.
- (b) The same person may be a Customer of more than one Operator:
 - i in respect of different Services provided by different Operators;
or
 - ii because the Customer is directly connected to one Operator's Network Facilities but utilises Services provided by another Operator.
- (c) The supply by an Operator to another Operator, which the latter Operator then utilises in providing Services to its Customers, does not mean that those Customers are also Customers of the first-mentioned Operator.
- (d) For the avoidance of doubt, the Operators acknowledge that each Operator will be responsible for billing its own Customers, unless express agreement to the contrary is made by the Access Provider and the Access Seeker. An agreement to the contrary may include, without limitation:
 - i the Access Provider billing on behalf of the Access Seeker; or

- ii the Access Provider in its own right billing the Customer of the Access Seeker and making a separate payment to the Access Seeker.

CHAPTER 5 : DISCLOSURE, NEGOTIATION AND CONTENT OBLIGATIONS

5.1 SCOPE

5.1.1 This subsection 5.1 imposes obligations on two types of persons.

5.1.2 Firstly, the obligations listed in Part A of each subsection will apply to:

- (a) all Network Facilities Providers who are required to provide Network Services or Network Facilities on the Access List under section 149 of the CMA; and
- (b) all Network Services Providers who are required to provide Network Services or Network Facilities on the Access List under section 149 of the CMA.

5.1.3 Secondly, the additional obligations listed in Part B of each subsection will apply to:

- (a) those Network Facilities Providers who are declared dominant under section 137 of the CMA and who are required to provide Network Services or Network Facilities on the Access List under section 149 of the CMA; and
- (b) those Network Services Providers who are declared dominant under section 137 of the CMA and who are required to provide Network Services or Network Facilities on the Access List under section 149 of the CMA.

5.2 APPLICABLE OBLIGATIONS

5.2.1 All persons to whom this section 5 applies (as authorised in subsection 5.1.2) must comply with Part A of each relevant subsection of this Standard, which address the following areas:

- (a) Disclosure Obligations (outlined in subsection 5.3), comprising obligations to:
 - i prepare and maintain an Access Reference Document;
 - ii make the Access Reference Document available;
 - iii follow prescribed procedures after acceptance of the Access Reference Document; and
 - iv follow prescribed procedures for amendment of the Access Reference Document.

- (b) Negotiation Obligations (outlined in subsection 5.4), comprising obligations to:
 - i negotiate in good faith;
 - ii observe a duty of confidentiality;
 - iii observe relevant Intellectual Property rights; and
 - iv conform to applicable timetabling obligations.

- (c) Content Obligations (outlined in subsections 5.5 to 5.18), which include:
 - i forecasting obligations;
 - ii ordering and provisioning obligations;
 - iii network conditioning obligations;
 - iv Point of Interface procedures;

- v decommissioning obligations;
- vi network changes obligations;
- vii equal access obligations;
- viii network facilities access and co-location obligations;
- ix billing and settlement obligations
- x operations and maintenance obligations;
- xi technical obligations;
- xii term, suspension and termination obligations; and
- xiii legal boilerplate obligations.

5.2.2 In addition to the obligations in subsection 5.2.1, Dominant Operators (described in subsection 5.1.3 above) shall comply with the obligations set out in the relevant Parts B of the relevant subsections of this Standard.

5.3 DISCLOSURE OBLIGATIONS

PART A: ALL-OPERATOR ACCESS OBLIGATIONS

5.3.1 **General duty:** All Operators shall, subject to the provisions of this Standard, provide, in response to a request in good faith from any other Operator, any information which is reasonably necessary for the negotiation, conclusion and implementation of the provision of access as contemplated in this Standard and in the CMA. No Operator may enter into any contract which would prevent it from making information available to other Operators unless such contract permits the Operator to do so if directed by the Commission.

5.3.2 **Access Reference Document:** Each Access Provider shall prepare and maintain an Access Reference Document in relation to Network Facilities or Network Services on the Access List which that Access Provider provides to itself or third parties and which:

- (a) contains terms and conditions which are consistent with the rights and obligations set out in this Standard; and
- (b) does not include terms and conditions which are inconsistent with the rights and obligations set out in this Standard.

5.3.3 **Freedom to negotiate:** Without limiting its obligations under the CMA, an Access Provider that has prepared an Access Reference Document shall not:

- (a) refuse to negotiate an agreement with an Access Seeker, whether the access sought is based on an Access Reference Document or otherwise; or
- (b) refuse to provide information required under this subsection 5.3 on the basis that the Access Seeker wishes to negotiate an agreement, whether the access sought is based on an Access Reference Document or otherwise.

5.3.4 **Availability:** Each Access Provider shall ensure that an Access Reference Document prepared by it shall:

- (a) be in writing (which includes legible electronic format);

- (b) contain all information required to be included under this subsection 5.3;
- (c) be accurate;
- (d) be modular, so that details about the terms and conditions of access to individual Network Services and Network Facilities is available separately from the terms and conditions of access to other Network Services and Network Facilities under an Access Reference Document;
- (e) be consistent with:
 - i the CMA;
 - ii this Standard; and
 - iii any applicable decision or determination of the Commission; and
- (f) be made available to the public on request in paper form at the Operator's principal place of business in Malaysia and on a publicly accessible website.

5.3.5 **Amendment:** If an Access Provider amends an Access Reference Document, that Access Provider must, within three (3) Business Days of those amendments being made, provide a copy of the amendments, or an amended copy of the relevant Access Reference Document, to:

- (a) all Access Seekers who are being provided with Access to Network Facilities and Network Services under an Access Reference Document; and
- (b) all Access Seekers who have requested an Access Reference Document within the period ninety (90) days prior to the making of such amendments, unless an Access Seeker has already indicated that it does not wish to proceed with an Access Application. For clarification, an amendment to an Access Reference Document shall not alter the terms and conditions on which the Access Provider provides access to an Access Seeker in accordance with an Access

Agreement between the parties (where such access is not provided under an Access Reference Document).

5.3.6 Information Disclosure: An Access Provider must provide the following information to an Access Seeker within seven (7) days of receipt of a written request from that Access Seeker, to the extent that it is not provided in the Access Provider's Access Reference Document:

- (a) the Access Provider's description of each of the Network Services and Network Facilities that may be supplied by the Access Provider, such description to be consistent with the description (if applicable) of the Network Services and Network Facilities on the register of Network Services and Network Facilities included in the Access List (as maintained by the Commission pursuant to section 148 of the CMA);
- (b) the application forms required to be completed by the Access Seeker to apply for access to Network Facilities and Network Services;
- (c) subject to subsection 5.3.7, a confidentiality agreement required to be executed by the Access Seeker;
- (d) the Access Provider's current access charges for Access to Network Facilities and Network Services;
- (e) details of the basis on which the Access Provider's current access charges are determined;
- (f) all relevant technical information relating to the Network Services or Network Facilities which may be the subject of the Access Request, including but not limited to any physical and logical interfaces of its network necessary to allow the development and deployment of telecommunication services, value-added services and telecommunications equipment that can interconnect to, and interoperate with, that Access Provider's Network;
- (g) details of the Access Provider's provisioning cycles and any impact such cycles may have upon an Access Request by the Access Seeker (eg capacity constraints);

- (h) details of the Access Provider's quality of service targets and achievements in respect of services which may be the subject of the Access Request;
- (i) the security requirements, insurance requirements and creditworthiness information required by the Access Provider (see also subsections 5.3.8, 5.3.9 and 5.3.10 in relation to Dominant Operators);
- (j) the Access Provider's reasons for failing to supply any of the information referred to in paragraphs (a) to (i) of this subsection 5.3.6.

5.3.7 **Confidentiality Agreement:** An Access Provider's confidentiality agreement to be provided to an Access Seeker on request under subsection 5.3.6:

- (a) shall be reciprocal;
- (b) shall be no broader than necessary to protect the legitimate commercial interests of the party disclosing the Confidential Information (**the disclosing party**);
- (c) shall include provisions prohibiting the party receiving the Confidential Information (**the receiving party**) from disclosing information to third parties or using information other than as necessary for the purposes of assessing an request for access;
- (d) shall not prevent the disclosure of Confidential Information or other information to the Commission by the receiving party.

PART B - DOMINANT OPERATOR OBLIGATIONS

5.3.8 **Security requirements:** A Dominant Operator shall ensure that the amount and type of any security requirements to be imposed on an Access Seeker in the Dominant Operator's security policy is commensurate with:

- (a) an estimate of the value of the access to Network Services and Network Facilities to be provided to the Access Seeker by the Dominant Operator over a ninety (90) day period;
- (b) the creditworthiness of the Access Seeker (including prior record of payment by the Access Seeker); and

(c) security previously reasonably required by the Dominant Operator.

5.3.9 **Insurance requirements:** A Dominant Operator shall ensure that any insurance that it requires an Access Seeker to have in place extends no further than the reasonable insurable interest that the circumstances require and shall not be permitted to require:

- (a) insurance beyond that necessary for worker's compensation, social security, employer's liability insurance and insurance within statutory limits as required by the laws of Malaysia in respect of its employees employed in connection with the work covered by the Access Agreement that may be entered into;
- (b) comprehensive general liability insurance in excess of Ringgit Malaysia [*amount to be inserted following Public Inquiry*] for any one claim or series of claims arising out of an accident or occurrence in connection with the Access Agreement that may be entered into.

5.3.10 **Creditworthiness information:** A Dominant Operator may only request creditworthiness information from an Access Seeker:

- (a) if that Dominant Operator reasonably believes that the Access Seeker may not be able to meet any liabilities that may arise under an agreement with the Access Seeker; and
- (b) if the creditworthiness information sought is limited to information which is publicly available or readily available to the Access Seeker; and
- (c) to the extent commensurate with an estimate of the value of the access to the Network Facilities and Network Services to be provided to the Access Seeker by the Dominant Operator over a ninety (90) day period.

5.4 NEGOTIATION OBLIGATIONS

PART A - OPERATOR ACCESS OBLIGATIONS

5.4.1 **Timing:** If an Operator wishes to negotiate an Access Agreement with another Operator:

- (a) both parties shall use their best endeavours to conclude the negotiations within ninety (90) days of a written request to commence negotiations; and
- (b) if negotiations are not completed within the ninety (90) days, the negotiations shall be deemed to be a dispute in respect of which:
 - i the parties may continue to negotiate; or
 - ii either party may initiate the Dispute Resolution Procedures

5.4.2 **Good faith:** An Operator shall co-operate, in good faith and in a commercially reasonable manner, in negotiating and implementing the terms of its agreements. This includes avoiding unnecessary disputes and resolving disputes promptly and fairly.

5.4.3 **Confidentiality:** An Operator must protect from disclosure any Confidential Information provided by another Operator in the course of negotiating an Access Agreement and during the term of an Access Agreement in accordance with a confidentiality agreement prepared under subsection 5.3.7.

5.4.4 **Intellectual Property:** An Operator shall only use such Intellectual Property and information provided by another Operator for the purposes of providing Access to the requested Network Services or Network Facilities. An Operator must not use such Intellectual Property or information for the development or marketing of other communication services or equipment by that Operator, its affiliates or third parties.

5.4.5 **Provision of application:** An Access Provider may require an Access Seeker to provide an Access Request to the Access Provider if:

- (a) there is no agreement in force between the Access Provider and the Access Seeker governing access to the Network Facilities or Network Services to which the Access Seeker seeks Access; or

- (b) there is such agreement, but:
 - i the current term of that agreement will expire or terminate within the next four (4) months; or
 - ii the requested Network Service or Network Facility is outside the scope of that agreement.

5.4.6 **Access Request:** An Access Provider may refuse to commence negotiations in relation to a request for Access unless and until the Access Seeker provides an Access Request containing information substantially in the form of the following:

- (a) the name and address of the Access Seeker;
- (b) the Network Services or Network Facilities in respect of which Access is sought;
- (c) whether the Access Seeker wishes to accept the Access Reference Document or to negotiate an agreement;
- (d) the ready for service date(s) the Access Seeker reasonably requires;
- (e) the names of personnel the Access Seeker nominates to represent the Access Seeker in the negotiations and, in respect of each of those personnel:
 - i his or her contact details;
 - ii his or her job title; and
 - iii details of his or her availability for the Access Negotiations;
- (f) the identity of the negotiating team leader, who shall:
 - i have authority to make binding representations on behalf of the Access Seeker in relation to matters arising from the negotiations; and
 - ii be suitably qualified for the role by training and experience;

- (g) the information (if any) the Access Seeker reasonably requires the Access Provider to provide for the purposes of the negotiations. The type of information which may be requested by the Access Seeker is described in subsection 5.3.6;
- (h) two (2) copies of a confidentiality agreement properly executed by the Access Seeker in the form prescribed by the Access Provider in accordance with subsection 5.3.7;
- (i) forecasts of the capacity the Access Seeker will reasonably require, having regard to the Access Provider's disclosed provisioning cycle (as described in paragraph 5.3.6(g)), and the forecasting procedures (as described in subsection 5.6) ;
- (j) the amount of charges the Access Seeker is prepared to pay for the requested Network Services and Network Facilities;
- (k) the quality of service the Access Seeker requires;
- (l) relevant technical information relating to the interface standards of the Access Seeker;
- (m) relevant information relating to the Access Seeker's Network and the functionality of its services which may affect the Access Provider's Network;
- (n) creditworthiness information in accordance with the Access Provider's requirements;
- (o) security in accordance with the Access Provider's security requirements;
- (p) insurance information in accordance with the Access Provider's insurance requirements; and
- (q) such other information as the Access Provider may reasonably request.

5.4.7 Obligations upon receipt: The Access Provider shall, within five (5) Business Days of receipt of an Access Request, respond to the Access

Seeker in writing acknowledging receipt of the Access Request and stating that:

- (a) if the Access Seeker is willing to accept an Access Reference Document from the Access Provider, the Access Provider is willing to provide access in accordance with an Access Reference Document; or
- (b) if paragraph 5.4.7(a) above does not apply, the Access Provider is willing to proceed to negotiate the Access Request; or
- (c) the Access Provider rejects the Access Request in accordance with subsection 5.4.10; or
- (d) the Access Provider requires specified additional information to make a decision on the Access Request in accordance with paragraph 5.4.7(a) or paragraph 5.4.7(b), and once that information is received from the Access Seeker, the Access Provider shall reconsider the Access Request in accordance with this subsection.

5.4.8 Access Reference Document Response: If the Access Provider responds that access will be provided in accordance with an Access Reference Document (as described in paragraph 5.4.7(a)), the Access Provider must, within seven (7) days of such response, provide an Access Reference Document executed by the Access Provider to the Access Seeker.

5.4.9 Negotiation response: If the Access Provider responds that it is willing to proceed with negotiation of the Access Request (as described in paragraph 5.4.7(b)), the Access Provider must set out in such response:

- (a) the names of personnel the Access Provider nominates to represent the Access Provider in the negotiations and, in respect of each of those personnel:
 - i his or her contact details;
 - ii his or her job title; and
 - iii details of his or her availability for the negotiations;
- (b) the identity of the negotiating team leader, who shall:

- i have authority to make binding representations on behalf of the Access Provider in relation to matters arising from the negotiations; and
 - ii be suitably qualified for the role by training and experience.
- (c) the information the Access Provider reasonably requires for the purposes of the negotiations;
- (d) a date and time, not later than fifteen (15) Business Days from the date of the Access Seeker's response, at which the Access Provider's nominated representatives will be available for the initial meeting with representatives of the Access Seeker; and
- (e) one copy of the executed confidentiality agreement returned by the Access Seeker (in accordance with paragraph 5.4.6(h)) that has also been properly executed by the Access Provider.

5.4.10 Refusal response: If the Access Provider responds that the Access Request is refused, the Access Provider must set out in the response:

- (a) the grounds in subsection 5.4.12 on which the Access Provider is relying; and
- (b) the basis of the Access Provider's decision with sufficient particularity to enable the Access Seeker to make its own assessment about the applicability of the specified grounds of rejection; and
- (c) a date and time, not later than seven (7) Business Days from the date of the rejection notice, at which representatives of the Access Provider will be available to meet with representatives of the Access Seeker for the purpose of discussing the rejection of the Access Request.

5.4.11 Non-grounds for refusal: Without limiting any other grounds that may be relied upon under the CMA, the Access Provider shall not take into account, when determining whether to accept or refuse an Access Request, amounts outstanding for access or services previously provided by the Access Provider to the Access Seeker where the Access Seeker disputed and withheld such amounts in accordance with the terms and conditions governing payment of such amounts.

5.4.12 **Grounds for refusal:** Without limiting any other grounds that may be relied upon under the CMA, an Access Provider shall not refuse an Access Request, except on the grounds that:

- (a) the Access Provider does not currently supply or provide access to the relevant Network Service or Network Facilities to itself or to any third person;
- (b) the Access Seeker has not provided all of the information required to be provided in accordance with subsection 5.4.6 of this Standard;
- (c) it is not technically feasible to provide access to the Network Services or Network Facilities requested by the Access Seeker;
- (d) the Access Provider has insufficient capacity to provide the requested Network Services or Network Facilities; or
- (e) the Access Provider has reasonable grounds to believe that the Access Seeker may fail to make timely payment for the requested Network Services or Network Facilities (subject to subsection 5.4.11) or may fail to perform other material contractual obligations.

5.4.13 **Dispute resolution:** If following the meeting between the parties required to be held pursuant to paragraph 5.4.10(c), the parties have been unable to resolve their differences about the validity of the Access Request and the Access Seeker continues to disagree with the Access Provider's rejection of the Access Request, either party may request resolution of the dispute in accordance with the Dispute Resolution Procedures.

5.4.14 **Prior to initial meeting:** An Operator (**objecting Party**) may only object to a person or persons nominated for meetings by the other Operator:

- (a) on the ground that the participation of such nominee would adversely affect the legitimate business activities of the objecting Party; and
- (b) any such objection must be made as soon as reasonably practicable after receipt of the particulars of the nominee in question and, in any event, not less than five (5) Business Days prior to the agreed date of the initial meeting (pursuant to paragraph 5.4.9(d)). A written explanation of the basis of the objection must be provided by the objecting Party when notifying the objection.

5.4.15 **Objection notice:** If an Operator receives notification from the other Operator of an objection under subsection 5.4.14, that receiving Operator shall ensure that the person described in subsection 5.4.14 (**the rejected representative**) does not attend the initial meeting. Each Operator shall use its reasonable endeavours at that initial meeting to resolve the dispute over the rejected representative if the nominating party still wishes to have that person included in its negotiating team.

5.4.16 **Initial meeting:** Each Operator shall ensure that its designated representatives meet on the date notified pursuant to paragraph 5.4.9(d) and that such representatives:

- (a) agree on the target ready for service date(s);
- (b) agree a timetable for the negotiations, including milestones and dates for subsequent meetings, required to meet the agreed target ready for service date;
- (c) agree on negotiating procedures, including:
 - i. calling and chairing meetings;
 - ii. responsibility for keeping minutes of meetings;
 - iii. clearly defined pathways and timetables for escalation within each Party of matters not agreed in meetings;
 - iv. procedures for consulting and including in the negotiating process relevant experts from the staff of each of the Operators; and
 - v. procedures for preparing and exchanging position papers;
- (d) review the information requested and provided to date and identify information yet to be provided by each Operator;
- (e) identify what technical investigations, if any, need to be made and by whom such investigations should be made.

5.4.17 **Additional services:** If an Access Seeker wishes to apply for access to Network Facilities or Network Services that are not covered by an existing

Access Agreement, then the application provisions set out above shall apply to any application for such additional Network Facilities or Network Services, save that the Access Provider shall use its best endeavours to conclude negotiations within forty five (45) days of the written request to commence negotiations in respect of access to the additional Network Facilities or Network Services.

PART B - DOMINANT OPERATOR OBLIGATIONS

5.4.18 **Good faith for Dominant Operators:** A Dominant Operator shall not:

- (a) refuse to negotiate terms of access not related to price for the reason that the price of access has not been agreed;
- (b) refuse to negotiate access to one Network Service or Network Facility because the Access Seeker has not agreed to acquire access to another Network Service or Network Facility;
- (c) require an Access Seeker to enter into a confidentiality agreement the terms of which would preclude the disclosure of information requested by the Commission or required to be disclosed for the purposes of dispute resolution;
- (d) require an Access Seeker to warrant that an Access Agreement complies with all applicable laws;
- (e) refuse to include in any Access Agreement a provision permitting variation of the Access Agreement in the event of any change in rules, applicable laws or applicable regulations (including Commission decisions and determinations);
- (f) make any negotiation conditional on the Access Seeker first obtaining any regulatory approval or consent;
- (g) intentionally mislead or coerce an Access Seeker into reaching an agreement it would not otherwise have reached;
- (h) intentionally obstruct or delay negotiations or any Dispute Resolution process;

- (i) fail to nominate representatives who have sufficient authority and sufficient availability to progress negotiations in a timely and efficient manner; or
- (j) fail to provide information that is necessary to conclude an Access Agreement including, without limitation:
- (k) information about the Dominant Operator's Network that the Access Seeker reasonably requires to identify the Network elements to which it requires access; and
- (l) information about the basis of the determination of charges.

5.4.19 **Non-permitted Information:** Notwithstanding anything else in this Standard, a Dominant Operator shall not oblige an Access Seeker to provide any of the following information to the Dominant Operator (whether as a condition of the provision of further information or as a condition of assessing the Access Seeker's application, or at any other time):

- (a) the Access Seeker's proposed service launch date;
- (b) details of the functionality of the Access Seeker's proposed service, except to the extent that such functionality may affect the Dominant Operator's Network;
- (c) details of the Access Seeker's network rollout plans, except to the extent that such rollout plans relate to ready-for-service dates requested by the Access Seeker in respect of particular Points of Interface;
- (d) details of the Access Seeker's current or proposed retail charges;
- (e) details of the Access Seeker's marketing strategy or proposed client base;
- (f) financial information relating to the Access Seeker's business, except to the extent that such information may be required pursuant to the creditworthiness requirements in subsection 5.3.10; or
- (g) details of any other supply arrangements or access agreements to which the Access Seeker is or may be a party, except to the extent

that such details are directly relevant to technical characteristics of the requested Access.

5.4.20 Technical infeasibility: For the purposes of paragraph 5.4.12(c), a Dominant Operator shall not reject an Access Request on the grounds of technical infeasibility unless the Dominant Operator establishes that there are substantial technical or operational concerns preventing the fulfilment of the Access Request. The following shall be taken into account in determining whether access is technically feasible:

- (a) economic, accounting, billing, space or site concerns shall be disregarded, by the Dominant Operator except that space or site concerns may be taken into account in circumstances where there is no possibility of expanding the space available on the relevant site;
- (b) any requirement for the Dominant Operator to modify its facilities or equipment in order to meet the Access Request will not, of itself, mean that the access is not technically feasible;
- (c) if the Dominant Operator asserts that meeting the Access Request would have an adverse impact on network reliability, the Dominant Operator must provide evidence that provision of the requested Network Facilities or Network Services would result in a specific and significant adverse impact on network reliability; and
- (d) the Dominant Operator must be able to demonstrate that it has considered and found not to be technically feasible (in accordance with this clause) workarounds that would allow the Dominant Operator to meet the Access Request (in whole or part and including for an interim period until any primary difficulties can be resolved).

5.4.21 Capacity constraints: A Dominant Operator may only refuse an Access Request on the ground set out in paragraph 5.4.12(d) where the Dominant Operator notifies the Commission in writing that it does not have sufficient capacity to meet the Access Request because the requisite capacity is:

- (a) already carrying traffic; or
- (b) already reserved for future use by the Dominant Operator or another Access Seeker, where such future use shall commence not later than six (6) months from the date of the Access Request. If the reserved

capacity is not subsequently used by the reserving party within seven (7) months from the date of the Access Report, the Dominant Operator must promptly inform the Access Seeker and, if required by the Access Seeker, re-consider the Access Request in accordance with this subsection 5.4; and

- (c) in the case of both paragraphs 5.4.21(a) and 5.4.21(b), the Dominant Operator is unable to expand capacity within the period forecast by the Access Seeker on the Access Seeker's Access Request.

5.5 CONTENT OBLIGATIONS: GENERAL

PART A - OPERATOR ACCESS OBLIGATIONS

5.5.1 **Content Obligations:** The Content Obligations covered in this subsection and following subsections are as follows:

- (a) General Obligations;
- (b) Forecasting Obligations;
- (c) Ordering and Provisioning Obligations;
- (d) Network Conditioning Obligations;
- (e) Point of Interface Procedures;
- (f) Decommissioning Obligations;
- (g) Network Changes Obligations;
- (h) Equal Access Obligations;
- (i) Network Facilities Access and Co-location Obligations;
- (j) Billing and Settlement Obligations;
- (k) Operations and Maintenance Obligations;
- (l) Technical Obligations;
- (m) Term, Suspension and Termination Obligations; and
- (n) the Legal Boilerplate Obligations.

5.5.2 **General:** All Access Providers must:

- (a) include in Access Reference Documents obligations which are consistent with the Content Obligations; and

(b) not include in Access Reference Documents obligations which are inconsistent with the Content Obligations.

5.5.3 **Compliance with Content Obligations:** In addition to incorporating obligations into its Access Reference Documents, each Operator shall comply with the obligations set out in this subsection and following subsections.

PART B – DOMINANT OPERATOR OBLIGATIONS

Nil

5.6 FORECASTING OBLIGATIONS

PART A – OPERATOR ACCESS OBLIGATIONS

5.6.1 **General:** An Access Provider may require, as a condition of providing Access to a Network Facility or Network Service (requested by the Access Seeker), that the Access Seeker provide Forecasts in good faith over a certain period of supply of Access to that Network Facility or Network Service (as the case may be) in accordance with this subsection 5.6.

5.6.2 **Non-Binding:** An Access Provider shall not require an Access Seeker:

- (a) to provide Forecasts that are legally binding on the Access Seeker, subject to subsection 5.6.12; or
- (b) to provide information in its Forecasts that identifies or would allow identification of Customers.

5.6.3 **Forecast Request:** An Access Provider may request an Access Seeker to provide, with a sufficient level of detail to enable the Access Provider to carry out Network planning, the following information (**Forecast Information**):

- (a) the Network Facility or Network Service or both in respect of which Forecasts are required;
- (b) the total period of time covered by each Forecast, which period:
 - i. shall be determined having regard to the Access Provider's own planning and provisioning cycles and the forecasting requirements which apply to the Access Seeker's own business units in using the relevant Network Facility or Network Service; and
 - ii. shall be not longer than one year, unless reasonably justified on grounds of the special Network management requirements of the relevant Network Facility or Network Service;
- (c) the intervals or units of time to be used in making the Forecast, which shall be not be longer than four (4) weeks unless reasonably justified on grounds of the special Network management requirements of the relevant Network Facility or Network Service;

- (d) the network area or operational area to which Forecasts shall relate, which area shall correspond to that which the Access Provider uses for its own Network planning;
- (e) the frequency with which a Forecast must be updated or further Forecast made, which shall not be more frequently than every six months unless reasonably justified on grounds of the special Network management requirements of the relevant Network Facility or Network Service; and
- (f) such other information that the Access Provider reasonably requires in order to provide access to the Network Facility or Network Service requested by the Access Seeker.

5.6.4 **Forecast Provision:** An Access Provider may only require an Access Seeker to provide Forecasts in accordance with a Forecast Request:

- (a) no sooner than four (4) weeks after receipt of a Forecast Request; and
- (b) until such time as the Access Provider notifies the Access Seeker in writing that it withdraws the relevant Forecast Request.

5.6.5 **Use of Forecast Information:** Forecast Information provided by the Access Seeker shall be treated by an Access Provider as the Confidential Information of the Access Seeker and shall only be used by those persons within the Access Provider whose role is within:

- (a) the Access Provider's wholesale or interconnection group; and
- (b) that part of the network engineering group of the Access Provider responsible for interconnection,

for the purpose of responding to and planning for the Forecast.

5.6.6 **Distribution of Forecast Information:** An Access Provider may only distribute Forecast Information of an Access Seeker outside the groups of people referred to in subsection 5.6.5 if:

- (a) the Forecast Information of the Access Seeker is aggregated with forecasts provided by other Operators and the Access Provider's own

requirements (so as to protect the confidentiality of the Forecast Information); and

- (b) the Forecast Information or its use does not otherwise identify the Access Seeker in any manner.

5.6.7 Time for acceptance: The Access Provider must notify the Access Seeker:

- (a) within seven (7) days of receiving the Forecast if the Access Provider considers the Forecast does not comply with a Forecast Request, specifying in that notice the additional information which the Access Seeker is to provide; and
- (b) within twenty one (21) days of receiving a Forecast which complies with the Forecast Request, that the Forecast is accepted.

5.6.8 Reasons for rejection: An Access Provider may only reject a Forecast where the Access Provider reasonably believes that the Forecast is inaccurate, having regard to:

- (a) total current usage of the Network Service or Network Facility;
- (b) the Access Seeker's past usage of the Network Service or Network Facility;
- (c) the current rate of growth of the Access Seeker's usage of the Network Service or Network Facility;
- (d) the current rate of growth of total current usage of the Network Service or Network Facility; and
- (e) the amount of capacity in the Network Service or Network Facility that the Access Provider currently has available and can reasonably provision over the Forecast period, which must be no less equivalent than that which the Access Provider can reasonably provision for itself.

5.6.9 Time for rejection: The Access Provider must give notice of any rejection to the Access Seeker:

- (a) within fourteen (14) days of receipt of the relevant Forecast; and

- (b) Such notice of rejection must specify:
 - i. the grounds on which the Access Provider rejects the Forecast in accordance with subsection 5.6.8, at a sufficient level of detail to enable the Access Seeker to understand the basis of the rejection and to undertake its own re-assessment of the Forecast; and
 - ii. an offer to meet within seven (7) days of the notice of rejection of the Forecast to discuss the reasons for rejection and alternative methods of compliance, which meeting shall take place between the Access Provider and Access Seeker if the offer is accepted by the Access Seeker (**Rejection Notice**).

5.6.10 **Reconsideration by Access Seeker:** The Access Provider must allow an Access Seeker to reconsider its forecast following a Rejection Notice and allow the Access Seeker, within twenty one (21) Business Days of receipt of a Rejection Notice, either:

- (a) to confirm its rejected Forecast, and explain why the Access Seeker regards the Forecast as being reasonable; or
- (b) to submit a new Forecast which the Access Seeker regards as meeting the Access Provider's concerns.

5.6.11 **Reconsideration by Access Provider:** The Access Provider shall reconsider any amended Forecast provided pursuant to subsection 5.6.10 and subsections 5.6.7 to 5.6.9 shall re-apply.

PART B – DOMINANT OPERATOR OBLIGATIONS

5.6.12 **Recovery for over-forecasting:** A Dominant Operator shall not seek to recover any costs or expenses incurred due to its acceptance of a Forecast from an Access Seeker if the Forecast is not met by the Access Seeker unless:

- (a) such costs and expenses were reasonably and necessarily incurred by the Dominant Operator;
- (b) the Dominant Operator reasonably seeks to mitigate its loss over a six month period (including through its own usage); and

- (c) the Dominant Operator only recovers from the Access Seeker 75% of such costs and expenses which could not be mitigated under paragraph 5.6.12(b) above.

5.6.13 Subject to subsections 5.6.7 to 5.6.9, a Dominant Operator must meet the Forecast requested.

5.7 ORDERING AND PROVISIONING OBLIGATIONS

PART A –OPERATOR ACCESS OBLIGATIONS

5.7.1 **Contact point:** The Access Provider shall designate a person to whom Orders for Access to Network Services and Network Facilities are to be delivered and shall notify the Access Seeker of the designated person from time to time.

5.7.2 **Order content:** Prior to Access being provided, an Access Provider may require an Access Seeker to provide it with an Order which outlines the Access Seeker's Access requirements. An Access Provider may request an Access Seeker to provide, at a level of detail sufficient for planning provisioning, the following information in an Order for Access to Network Services and Network Facilities:

- (a) the Network Facility or Network Service or both to which Access is requested;
- (b) a requested time for delivery;
- (c) the location of the points of delivery;
- (d) equipment of the Access Seeker to be used in connection with the Order; and
- (e) such other information that the Access Provider reasonably requires in order to provide access to the Network Service or Network Facility requested by the Access Seeker.

5.7.3 **Use of Ordering Information:** Ordering information provided by the Access Seeker shall be treated by a Access Provider as the Confidential Information of the Access Seeker and shall only be used by those persons within the Access Provider whose role is within:

- (a) the Access Provider's wholesale or interconnection group; and
- (b) that part of the network engineering group of the Access Provider responsible for interconnection,

for the purpose of responding to and provisioning for the Order.

- 5.7.4 **Treatment of Orders and Studies:** An Access Provider shall give the same priority to the handling of Orders from the Access Seeker and any Studies that may be required for that Access Seeker as it gives to its own Orders and Studies and any Orders and Studies that may be required for customers who are similarly situated to the Access Seeker in all relevant respects.
- 5.7.5 **Acknowledgment of receipt:** An Access Provider shall acknowledge receipt of the Order, in writing (or any other material or electronic form agreed by the parties), within two (2) days of receipt of an Order from the Access Seeker.
- 5.7.6 **Notice of receipt:** The Access Provider must include in its Notice of Receipt the following information:
- (a) the time and date of receipt; and
 - (b) a list of any additional information reasonably required by the Access Provider from the Access Seeker to clarify the Order.
- 5.7.7 **Further information:** The Access Provider shall allow the Access Seeker a period of up to fourteen (14) days after a request for additional information to provide the Access Provider with such additional reasonable information that is reasonably necessary to clarify an Order.
- 5.7.8 **Studies:** The Access Provider shall only conduct Studies if:
- (a) the Access Provider reasonably requires information from such Studies which is not readily available; and
 - (b) the Access Provider notifies the Access Seeker that such Studies are necessary within seven (7) days of receiving the Access Seeker's Order, together with the reasons for such Studies.
- 5.7.9 **Completion of Studies:** The Access Provider shall:
- (a) complete any Study in respect of an Order within twenty-one (21) days of receiving such Order;
 - (b) inform the Access Seeker of the result of any Study within two (2) days of the completion of such Study.

5.7.10 **Withdrawal of order following Study:** An Access Provider shall permit an Access Seeker to withdraw its Order without penalty within fourteen (14) days after receiving the result of a Study under subsection 5.7.9.

5.7.11 **Acceptance obligation:** An Access Provider must use its reasonable efforts to accept and fulfil Orders from the Access Seeker for Network Services and Network Facilities which comply with a Forecast accepted by the Access Provider pursuant to subsection 5.6.

5.7.12 **Time for acceptance/rejection:** The Access Provider must notify the Access Seeker within fourteen (14) days of receiving a Order that the Order is accepted or rejected, save where the Access Provider undertakes a Study as contemplated in subsection 5.7.8, in which case the time periods in subsection 5.7.9 are to be added to this fourteen (14) day period.

5.7.13 **Notice of acceptance:** An Access Provider's notice of acceptance to the Access Seeker must contain the following information:

- (a) the delivery date, which must be consistent with subsection 5.7.14 and must be no later than the indicative delivery timeframes set out in subsection 5.7.14 or the date requested by the Access Seeker;
- (b) the charges applicable to the fulfilment of the Order;
- (c) such information as is reasonably necessary for the Access Seeker to benefit from Access to the Network Service or Network Facility;
- (d) the validity period of the acceptance of the Order which shall be no less than ninety (90) days from the date of acceptance.

5.7.14 **Indicative delivery times:** For the purposes of paragraph 5.7.13(a), the following are the indicative delivery timeframes for the following aspects of a Network Service or Network Facility:

Order type	Indicative delivery timeframes
All Orders	30 days

5.7.15 **Access Seeker confirmation:** An Access Provider shall permit an Access Seeker to confirm its agreement to proceed with the Order within the validity period of the Access Provider's acceptance of such Order (as described in

paragraph 5.7.13(d)). Upon such confirmation, the Access Provider shall fulfil the Order in accordance with the notice of acceptance provided under subsection 5.7.13.

5.7.16 Estimated charges: If the notice of acceptance provided by the Access Provider under subsection 5.7.13 contains estimates of charges (eg based on a time and materials basis):

- (a) the Access Provider shall not exceed the estimate without providing the Access Seeker with written notice prior to exceeding the estimate that:
 - i. the estimate will likely be exceeded;
 - ii. an explanation of the reasons for exceeding the estimate; and
 - iii. a further estimate of the charges for the work necessary to fulfil the order.
- (b) the Access Provider shall permit the Access Seeker to withdraw the Order without penalty if the revised estimate exceeds the original estimate by more than 10% of the original estimate.

5.7.17 Reasons for rejection: An Access Provider may only reject an Order from an Access Seeker where:

- (a) it is not technically feasible to provide access to the Network Services or Network Facilities requested by the Access Seeker;
- (b) the Access Provider has insufficient capacity to provide the requested Network Services or Network Facilities;
- (c) subject to subsection 5.7.19, the order is in excess of agreed forecast levels;
- (d) the order or variation request duplicates an order awaiting fulfilment;
- (e) the Access Seeker has not obtained necessary related agreements from the Access Provider (eg. facilities access for a new Point of Interface);

- (f) there are reasonable grounds to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions of this Agreement; or
- (g) there are reasonable grounds to believe that the Access Seeker would fail, in connection with the supply of the Service to protect the integrity of a telecommunications network; or the safety of individuals working on, or using services supplied by means of, a telecommunications network or equipment.

5.7.18 Notice of rejection: An Access Provider's notice of rejection to the Access Seeker must:

- (a) set out the grounds on which the Access Provider rejects the Order, at a sufficient level of detail to enable the Access Seeker to understand the basis of the rejection and to undertake its own re-assessment of the Order; and
- (b) offer to meet, and meet if the offer is accepted by the Access Seeker, within seven (7) days of the notice of rejection of the Order to discuss the reasons for rejection and alternative methods of compliance.

5.7.19 Order in excess of forecast: Notwithstanding paragraph 5.7.17(b), an Access Provider must use its reasonable efforts to provide sufficient capacity to enable the Access Provider to accept and fulfil orders from an Access Seeker for Network Services or Network Facilities or both which are in excess of the relevant Forecast. The Access Provider is only required to do so if, after meeting the Forecast requirements of other Operators and of its own business units, there is available capacity or the Access Provider could readily upgrade existing capacity. The Access Provider shall allocate that available capacity on a non-discriminatory basis to meet the over forecast requirements of the Access Seeker, other Operators and its own business units. An Access Provider is not required to supply Network Services or Network Facilities or both in excess of Forecast if, despite adopting any reasonable workarounds (including upgrading capacity), this would cause a material degradation in the quality of forecast services provided to other Operators or its own business – or both.

5.7.20 Required extra capacity: An Access Provider may require an Access Seeker to procure such additional capacity on the Access Seeker's side of the Network as the Access Provider, in good faith and reasonably, estimates may

be required by the Access Seeker to meet demand. Where the Access Seeker fails to so procure additional capacity and the demand exceeds the capacity on the Access Seeker's Network, the Access Provider may bar or block calls to the Access Seeker's network to the extent necessary to minimise congestion within the Access Provider's network.

5.7.21 **Other uses:** An Access Provider shall permit capacity installed in connection with the provision of a Network Service to be used, to the extent technically feasible, in connection with another Network Service, at the Access Seeker's option.

5.7.22 **Delivery dates:** the Access Provider shall deliver the ordered Access to Network Facilities or Network Services by the date specified in the notice of acceptance (as provided under subsection 5.7.13).

5.7.23 **Early Delivery Dates:** If the Access Provider, in the normal course of business, is able to offer a delivery date earlier than the delivery date that would otherwise apply, it must advise the Access Seeker and deliver Access to the relevant Network Services or Network Facilities or both at the earlier delivery date.

5.7.24 **Delayed Delivery Dates:** An Access Provider shall:

- (a) notify an Access Seeker of the delay to a delivery date, together with the reasons for the delay, as soon as practicable after the Access Provider becomes aware of the possible delay; and
- (b) permit the Access Seeker notified under paragraph 5.7.24(a) above to cancel the order without penalty if the delay is longer than fourteen (14) days.

5.7.25 **Cancellation and Variation of Orders:** An Access Provider shall allow an Access Seeker to cancel or vary an Order at any time.

5.7.26 **Cancellation penalty:** Except where this Standard provides that cancellation is to be at no penalty, an Access Provider shall only charge an Access Seeker which has cancelled or varied an Order no more than the costs necessarily incurred by the Access Provider in relation to the cancelled or varied Order, reduced by the level at which those costs may be mitigated over a six (6) month period after the date of cancellation or variation.

5.7.27 Testing and Provisioning: An Access Provider shall:

- (a) co-operate with the Access Seeker in relation to the testing and provisioning of ordered Network Services or Network Facilities or both; and
- (b) treat an Access Seeker's testing and provisioning on an equivalent basis to that which the Access Provider treats itself.

PART B – DOMINANT OPERATOR OBLIGATIONS

5.7.28 Queuing Policy: A Dominant Operator shall establish and maintain a queuing policy system which:

- (a) shall be non-discriminatory;
- (b) shall treat the orders of Access Seeker's on an equivalent basis to that which the Dominant Operator treats its own orders for similar services;
- (c) shall seek to maximise the efficiency of its ordering and provisioning process.

5.7.29 Acceptance on Queue: A Dominant Operator shall promptly notify an Access Seeker, at the time of providing an acknowledgment of receipt of the Order under subsection 5.7.5, of their acceptance on the Dominant Operator's queue.

5.7.30 Constrained Capacity: If a Dominant Operator reasonably believes that the capacity in any Network Service or Network Facility required by:

- (a) the Access Seeker pursuant to the relevant Forecast;
- (b) other Access Seekers, pursuant to their relevant Forecasts; and
- (c) the Dominant Operator, for its own purposes,

would, in aggregate, exceed the capacity which the Dominant Operator will be in a position to be able to provide, the Dominant Operator must:

- i. notify the Access Seeker and other persons to whom relevant capacity is supplied; and

- ii. allocate the available capacity between itself, the Access Seeker and other Access Seekers in accordance with the Dominant Operator's Capacity Allocation Policy.

5.7.31 Capacity Allocation Policy: A Dominant Operator shall maintain a Capacity Allocation Policy, which:

- (a) shall be disclosed, free of charge, to any other Operator on request;
- (b) shall set out the principles in accordance with which the Dominant Operator shall determine how to allocate capacity between itself and another Operator or Operators, in circumstances where the amount of capacity available is less than the aggregate of capacity required by the Dominant Operator and another Operator or Operators;
- (c) shall:
 - i. be fair and reasonable;
 - ii. be consistent, so far as practicable, with the Dominant Operator's general duty of non-discrimination in accordance with subsection 149(2) of the CMA;
 - iii. treat the requirements of the Access Seeker and third parties on an equivalent basis to the Dominant Operator's own requirements; and
 - iv. allocate the available capacity in the relevant Network Service or Network Facility or both in proportion to each Operator's forecast requirements.

5.7.32 Late delivery: If a Dominant Operator:

- (a) fails to meet any timeframes in subsection 5.7.14 with respect to the delivery of access to Network Services or Network Facilities pursuant to an Order made in accordance with subsection 5.7; and
 - (b) such failure is solely due to the failure of that Dominant Operator,
- that Dominant Operator shall, without limitation to any other rights the Access Seeker may have under subsection 5.7 or law, provide a

remedy to the affected Access Seeker in the form of a credit note to the Access Seeker. The credit note shall be for an amount equivalent to the recurring charges payable for Access to the Network Service or Network Facility over a period equal to the period of the Dominant Operator's delay.

5.8 NETWORK CONDITIONING OBLIGATIONS

PART A –OPERATOR ACCESS OBLIGATIONS

5.8.1 **Non-discrimination:** An Access Provider shall perform Network Conditioning on an equivalent basis to that which the Access Provider performs similar network conditioning for itself for the same or similar services.

5.8.2 **Impact of retail commercial arrangements:** An Access Provider must not refuse to commence or complete Network Conditioning on the basis that the commercial arrangements (other than matters required under subsection 5.8.3 of this Standard to perform network conditioning) are not agreed between the parties in relation to the retail service for which the Network Conditioning is to be provided.

5.8.3 **Commencement:** An Access Provider must commence Network Conditioning immediately following agreement by the Access Provider and the Access Seeker in relation to:

- (a) geographical coverage;
- (b) number information (i.e. length and code allocation);
- (c) origins from or destinations to which Access is required;
- (d) network routes (including which party is responsible for provision of the interconnection links); and
- (e) handover arrangements and relevant Points of Interface.

5.8.4 **Number range activation:** Subject to subsection 5.8.5, the Access Provider shall:

- (a) use its best endeavours to activate a code or number range in its network within fourteen (14) days of being requested to do so by the Access Seeker; and
- (b) in all cases, activate a code or number range within thirty (30) days of being requested to do so by the Access Seeker to whom the code or number range has been allocated.

5.8.5 **Intra-network codes and numbers:** Subsection 5.8.4 does not apply to codes or number ranges not intended for use across interconnected Networks.

5.8.6 The costs incurred in network conditioning shall be apportioned in an equitable manner between the Operators.

PART B – DOMINANT OPERATOR OBLIGATIONS

Nil

5.9 POINT OF INTERFACE PROCEDURES

PART A –OPERATOR ACCESS OBLIGATIONS

- 5.9.1 **Interconnection:** Each Operator shall interconnect and keep interconnected its Network with the Network of another Operator in accordance with the terms of an agreement with that Operator.
- 5.9.2 **Point of Interface locations:** Subject to subsection 5.9.3, each Access Provider shall publish on its website and keep updated a list of locations:
- (a) at which physical co-location is available;
 - (b) in respect of which virtual co-location is available;
 - (c) in respect of which in-span interconnection is available,
- on and from the date of publication for the following 12 months.
- 5.9.3 **Virtual and in-span interconnection:** Each Operator shall offer virtual co-location or in-span interconnection at all technically feasible points.
- 5.9.4 **Deemed Access Providers:** If an Access Seeker (referred to in this subsection 5.9.4 as the deemed Access Provider) obtains physical co-location at a Point of Interface from an Access Provider (referred to in this subsection 5.9.4 as the principal Access Provider) it shall be deemed to be an Access Provider to permit other Access Seekers to co-locate at the same place and such deemed Access Provider shall follow the same procedures in respect of permitting access as those required to be followed by the principal Access Provider in providing access.
- 5.9.5 **Lack of space:** If there are space constraints at a particular location, an Access Provider shall take reasonable steps to optimise its usage of the space, including through the upgrading of facilities. If the Access Provider has used its best efforts to accommodate all Access Providers and it is not physically possible for any further Access Seekers to be accommodated, the Access Provider shall be excused from providing physical interconnection at such location.
- 5.9.6 **Access Seeker requested Point of Interface:** An Access Provider shall reasonably consider a request by an Access Seeker to interconnect at a point

other than that specified under subsection 5.9.2. The Access Provider shall promptly accept or reject a request by an Access Seeker under this subsection.

5.9.7 Network responsibility: Each Operator is responsible for the provisioning and maintenance of Network Facilities (including those Network Facilities which form part of the Interconnect Links and the transmission equipment) on its side of the Point of Interface.

5.9.8 Third Party Point of Interface: An Access Provider shall permit an Access Seeker to nominate a Point of Interface of a third party for the purposes of interconnection and access between the Access Provider and the Access Seeker.

PART B – DOMINANT OPERATOR OBLIGATIONS

5.9.9 Point of Interface factors: When determining which locations are to be listed under subsection 5.9.2, or when determining a request under subsection 5.9.6, each Dominant Operator must have regard to the following:

- (a) the Dominant Operator shall offer (but shall not require) interconnection and co-location for every area code throughout Malaysia;
- (b) in addition to paragraph 5.9.9(a) above, the Dominant Operator shall offer interconnection and co-location at any other technically feasible point;
- (c) the Dominant Operator may offer more than one form of interconnection in relation to a particular location (eg physical interconnection and virtual interconnection);
- (d) the Dominant Operator shall not reserve space other than for its own current needs, its future needs (calculated by use of a reasonably projected rate of growth over two (2) years) and the needs of other Access Seekers who are currently occupying or have ordered additional space from that Dominant Operator; and
- (e) any possible re-arrangement of its equipment configuration to eliminate space inefficiencies;

5.9.10 **Inter-area-code service:** A Dominant Operator shall offer interconnection to permit calls to be transmitted across area code boundaries, whether directly or in transit.

5.10 DECOMMISSIONING OBLIGATIONS

PART A –OPERATOR ACCESS OBLIGATIONS

5.10.1 **Decommissioning notice:** An Access Provider must provide no less than:

- (a) one (1) year's notice in writing to all relevant Access Seekers prior to the decommissioning of a Point of Interface; or
- (b) six (6) month's notice in writing to all relevant Access Seekers prior to the decommissioning of any other Network Facility or Network Service.

5.10.2 **Co-operation:** An Access Operator must co-operate with all relevant Access Seekers in relation to the timetable for decommissioning of the relevant Point of Interface, Network Facility or Network Service.

5.10.3 **Alternative arrangements:** An Access Provider which notifies an Access Seeker of its intention:

- (a) to decommission a Point of Interface, shall provide to the Access Seeker functionally equivalent interconnection at another Point of Interface on terms and conditions and at a recurring charge which are not disadvantageous to the Access Seeker, relative to the terms and conditions and recurring charge applying in respect of the Point of Interface that is proposed to be decommissioned, for a period not less than three (3) years from the date of decommissioning; or
- (b) to decommission another Network Facility or Network Service, shall provide to the Access Seeker access to an alternative Network Facility or Network Service on terms and conditions and at a recurring charge which are not disadvantageous to the Access Seeker, relative to the terms and conditions and recurring charge applying in respect of the Network Facility or Network Service that is proposed to be decommissioned, for a period not less than twelve (12) months from the date of decommissioning.

5.10.4 **Decommissioned Point of Interface compensation:** An Access Provider shall pay the Access Seeker's costs necessarily incurred in:

- (a) decommissioning any links to the Point of Interface that is proposed to be decommissioned that are rendered or will be redundant by the proposed decommissioning;
- (b) installing or otherwise procuring links between the Point of Interface that is proposed to be decommissioned and the substitute Point of Interface to be provided pursuant to paragraph 5.10.3 (a); and
- (c) the carriage of traffic between the Point of Interface that is proposed to be decommissioned and the substitute Point of Interface to be provided pursuant to paragraph 5.10.3 (a) for a period not less than three (3) years from the date of decommissioning.

5.10.5 Decommissioned Network Facility/Network Service compensation: An Access Provider shall pay the Access Seeker's costs necessarily incurred in:

- (a) moving the Access Seeker's equipment from the decommissioned Network Facility to the alternative Network Facility offered in accordance with subsection 5.10.3; or
- (b) re-arranging equipment to connect to the alternative Network Service offered in accordance with subsection 5.10.3.

PART B – DOMINANT OPERATOR OBLIGATIONS

Nil

5.11 NETWORK CHANGE OBLIGATIONS

PART A –OPERATOR ACCESS OBLIGATIONS

5.11.1 **Scope:** This subsection 5.11 applies where an Operator proposes to implement a network change of a type referred to in subsection 5.11.2 which necessitates a change in the hardware or software (including interface software) of the other Party's Network in order to ensure the continued proper operation and compatibility of the Parties' respective Networks, services and procedures.

5.11.2 **Types of Changes:** The following kinds of proposed network changes may be within the scope of subsection 5.11.1:

- (a) any change by the Party proposing to make the change (**Notifying Party**) to any technical specification of the interconnection interface between their respective networks (**Interface Change**);
- (b) any change by the Notifying Party to any technical specification or characteristic of the Network Service or Network Facility to which the other Party (**Recipient Party**) has Access which will or might affect:
 - i. the Recipient Party's Network;
 - ii. the Recipient Party's use of the Network Service or Network Facility provided by the Notifying Party (**Service Change**);
- (c) any change by the Notifying Party to any technical specification or characteristic of that Notifying Party's Network which will or might affect the Recipient Party's Network (**Network Change**);
- (d) any change by the Notifying Party to any of the operational support systems used in intercarrier processes, including without limitation:
 - i. the billing system;
 - ii. the ordering and provisioning systems; or
 - iii. the customer churn process, (**OSS Change**); and

- (e) any enhancement by the Notifying Party of the features, functions or capabilities of the Network Service or Network Facility to which the Recipient Party has access, which enhancement the Notifying Party proposes to make available either:
 - i. to itself; or
 - ii. to any other Operator (**Functionality Change**),
 (collectively, **Relevant Changes**).

5.11.3 **Notification of change:** If a Notifying Party proposes to make a relevant change to its Network, services or procedures, the Notifying Party shall provide the Recipient Party's with notice in writing (**Change Notice**) of:

- (a) the nature, effect, technical details and potential impact on the Recipient Party's Network of the proposed Relevant Change, described at a sufficient level of detail to enable the other party to identify and begin planning such changes as may be necessary or desirable for the Recipient Party to make to its Network, Services or procedures in consequence of the Relevant Change; and
- (b) a date, which shall be no later than ten (10) Business Days from the date of the notice under this clause, on which representatives of the Notifying Party will be available to discuss with representatives of the Recipient Party the proposed Relevant Change and the changes that may be necessary or desirable for the Recipient Party to make to its Network, Services or procedures in consequence of the Relevant Change,

as soon as reasonably practicable and, in any event, with not less than the relevant notice period set out in the table below:

Relevant Change:	Notice period:
Interface Change	6 months
Network Change	6 months
Service Change	6 months
OSS Change	6 months
Functionality Change	6 months

5.11.4 Post-notification procedures: The Notifying Party shall:

- (a) meet with representatives of the Recipient Party on the date set out in the Change Notice or as soon as practicable thereafter (but no later than the notice period set out in the table in subsection 5.11.3), for the purpose of discussing the Relevant Change and any changes that may be necessary or desirable for the Recipient Party to make to its Network, Services or procedures in consequence of the Relevant Changes;
- (b) provide any additional information reasonably requested by the Recipient Party no later than ten (10) Business Days after the Recipient Party's request for such additional information; and
- (c) take reasonable account of concerns raised and proposals made by the Recipient Party to minimize any adverse impact of the Relevant Changes on the Recipient Party and revise the Change Notice accordingly.

5.11.5 Testing: A Notifying Party shall:

- (a) co-operate with a Recipient Party in relation to the development of procedures for testing the impact of the Relevant Changes on the proper operation and compatibility of the Parties' respective Networks;
- (b) jointly carry out testing with the Recipient Party no less than twenty (20) Business Days before the Notifying Party proposes to effect the Relevant Changes. The testing shall be conducted in accordance with the testing procedures developed under paragraph 5.11.5(a).

5.11.6 Testing failure: If:

- (a) the Parties fail to complete testing required pursuant to subsection 5.11.5 fifteen (15) Business Days (or less) before the Notifying Party proposes to effect the Relevant Changes; or
- (b) testing pursuant to subsection 5.11.5 does not provide reasonable assurance of the continued proper operation and compatibility of the Parties' respective Networks, Services and procedures,

the Notifying Party must postpone implementation of the Relevant Changes for such period of time as may be necessary to allow the Parties to repeat the steps in subsections 5.11.3 to 5.11.5 above.

PART B – DOMINANT OPERATOR OBLIGATIONS

5.11.7 **Cost of network changes:** The Dominant Operator as a Notifying Party shall bear the reasonable costs incurred by the Recipient Party in relation to, or consequent upon, Relevant Changes notified by the Dominant Operator.

5.12 EQUAL ACCESS OBLIGATIONS

PART A –OPERATOR ACCESS OBLIGATIONS

5.12.1 **Scope of legislative obligation:** In accordance with the ALD:

- (a) Equal Access is an interconnection service provided by means of a fixed network for the carriage of call communications over the voice bandwidth from customer equipment to a POI which allows an end user to select and use the services of a Network Operator other than the Network Operator of the network to which the customer is directly connected.
- (b) The Equal Access may be provided on a call by call basis (for instance, through dialling of an equal access prefix code) or on a preselection basis (for instance, via a semi-permanent switch recognition of Customer's choice).

5.12.2 **Line Activation:** An Access Provider shall comply with the following procedures in relation to Line Activation:

- (a) The Access Provider shall ensure that all Fixed Access Lines connected to that Access Provider's Network are Line Activated on and from the date of this Standard;
- (b) An Access Provider shall ensure that all New Fixed Access Lines connected or to be connected to that Access Provider's Network are Line Activated on and from the date the Access Provider's Services are activated over that Line;
- (c) An Access Provider shall not remove the Line Activation from a Fixed Access Line unless:
 - i. the Access Provider is also disconnecting all Services over the Fixed Access Line; or
 - ii. a Customer requests, at the sole initiation of the Customer, the Line Activation to be removed.

- (d) Unless otherwise agreed, an Access Provider may not bar access to another Operator's Carrier Selection Code on a Fixed Access Line connected to the Access Provider's Network unless:
- i. the Customer requests, at the sole initiation of the Customer, such barring and the Access Provider also bars access to all Equal Access Services (including access to its own Equal Access Services) over the Fixed Access Line; or
 - ii. that other Operator's Network is not interconnected with the Access Provider's Network; or
 - iii. in accordance with subsection 5.7.20.

If the Customer wishes to selectively bar access to another Operator's Carrier Selection Code, the Access Provider shall direct the Customer to that other Operator.

5.12.3 Customer Registration and Billing: An Access Provider is not obliged to, and may not (unless otherwise agreed with the other Operator):

- (a) capture Calls made by persons to another Operator's Equal Access Services using the Operator's Carrier Selection Code for the purposes of registering that person to that Service; and
- (b) collect information necessary to bill Customers for access to another Operator's Equal Access Services; and
- (c) bar access to another Operator's Equal Access Service for whatever reason.

5.12.4 Cost: The cost of an Operator's network upgrading for the sole purpose of permitting Equal Access shall be shared amongst the relevant Operators according to a method agreed between those Operators.

PART B – DOMINANT OPERATOR OBLIGATIONS

Nil

5.13 NETWORK FACILITIES ACCESS AND CO-LOCATION

PART A –OPERATOR ACCESS OBLIGATIONS

- 5.13.1 **Scope:** This subsection 5.13 applies where co-location or access is to be provided to or at Network Facilities under this Standard.
- 5.13.2 **Inspection:** An Access Provider shall allow a potential Access Seeker to physically inspect a Network Facility of the Access Provider during normal business hours provided that the Access Seeker has provided no less than two (2) days notice of its request to perform a physical inspection.
- 5.13.3 **Physical access:** An Access Provider shall allow an Access Seeker, its employees and contractors to physically access the Access Provider's Network Facilities and have physical control over the Access Seeker's equipment located at such Network Facilities, twenty-four (24) hours a day, seven (7) days a week.
- 5.13.4 **Escorts:** If an Access Provider determines that it is necessary to have an escort present when employees or contractors wish to enter onto the Access Provider's property, the Access Provider shall:
- (a) make such escort service available at all times during ordinary business hours; and
 - (b) have such escort service on call (with no longer than a thirty (30) minute response time to attend at the Access Provider's property) outside ordinary business hours; and
 - (c) bear the costs of such escort service.
- 5.13.5 **Reservation of space:** An Access Provider shall not reserve space other than for its own current needs, its future needs, (calculated by use of a reasonably projected rate of growth over 2 years) and the needs of other Access Seekers who are currently occupying or have ordered space from that Access Provider.
- 5.13.6 **Allocation of space:** An Access Provider shall allocate space at each location where co-location is to be permitted in a non-discriminatory way and will treat other Operators as it treats itself.

5.13.7 **No minimum space requirements:** An Access Provider shall not impose minimum space requirements on an Access Seeker.

5.13.8 **Re-configuration:** If there are space constraints at a particular location, an Access Provider shall take reasonable steps to optimise its usage of the space, including through the upgrading of facilities or endeavouring to transfer the equipment to an alternative location.

5.13.9 **Advice to the Commission:** An Access Provider shall notify the Commission every six (6) months of its space requirements over a two (2) year period from the date of notification, together with a reconciliation of its reservation over the previous twelve (12) months with its actual space needs.

5.13.10 **Preparatory work by the Access Seeker:** If preparatory work is necessary for the purposes of allowing the Access Seeker to obtain Access to or co-locate at or on an Access Provider's Network Facility, such Access Provider shall permit the Access Seeker's employees or contractors to perform such preparatory work if the Access Seeker satisfies the Access Provider (acting reasonably and in accordance with the guidelines referred to below) that such employees or contractors have the necessary qualifications. Each Access Provider shall publish and make available a policy about the necessary qualifications of employees and contractors who will be permitted to perform preparatory work under this subsection 5.13.10, such policy to be non-discriminatory in its application to the Access Provider and the Access Seeker personnel who perform similar functions.

5.13.11 **Preparatory work by the Access Provider:** If the Access Provider agrees to perform preparatory work and does so on the basis of an estimated charge (eg based on a time and materials basis):

- (a) the Access Provider shall not exceed the estimate without providing the Access Seeker with prior written notice that:
 - i. the estimate will likely be exceeded; and
 - ii. a further estimate of the charges for the work necessary to complete the preparatory work; and
- (b) the Access Provider shall permit the Access Seeker to withdraw the request for preparatory work without penalty if the revised estimate

exceeds the original estimate by more than 10% of the original estimate.

5.13.12Delays: If the Access Provider agrees to perform preparatory work and the Access Provider is or is likely to be unable to perform such work within the agreed timeframe, the Access Provider shall:

- (a) notify the relevant Access Seeker of the delay to a delivery date, together with the reasons for the delay, as soon as practicable after the Access Provider becomes aware of the possible delay; and
- (b) permit the Access Seeker notified under paragraph 5.13.12(a) to cancel the preparatory work without penalty if the delay is longer than fourteen (14) days.

5.13.13Utilities and ancillary services: If an Access Provider has permitted access or physical co-location at a particular location or Network Facility, that Access Provider must ensure that all necessary utilities and ancillary services are provided to enable the Access Seeker to benefit from such access or co-location, including but not limited to:

- (a) access to roads;
- (b) access to land;
- (c) power, including the provision of back up power;
- (d) environmental services (including but not limited to heat, light, ventilation and air-conditioning, fire protection);
- (e) security, including care of equipment, taking care to ensure that its agents, representatives or sub-contractors do not damage any equipment, and keeping the location secure and protected from vandalism or theft; and
- (f) site maintenance.

5.13.14Security caging: An Access Provider shall not require the use of cages or similar structures to physically segregate co-located equipment or equipment to be located at or on a Network Facility of the Access Seeker.

5.13.15**Equipment allowance:** An Access Provider shall permit an Access Seeker to locate Equipment on or at the Access Provider's Network Facility which is necessary for the purposes of obtaining the benefit of access to the Network Services and Network Facilities provided in accordance with this Standard, including but not limited to multi-functional Equipment which may also be used for purposes other than those specified in this subsection 5.13.15.

5.13.16**Marking:** All Operators shall mark or label their Equipment in such a manner that they can be easily identified as the Equipment of the Operator.

5.13.17**Maintenance:** An Access Provider shall permit, and do all things reasonably necessary to allow an Access Seeker to maintain its Equipment at or on a Network Facility to which Access has been granted, unless it is technically infeasible to allow the Access Seeker to do so. This may include, for example, the provision of physical access. For the purposes of this subsection 5.13.17, it shall be deemed technically feasible for an Access Seeker to maintain its Equipment on a Network Facility if the Access Provider allows external contractors or other third parties to maintain similar Equipment on the Network Facility.

5.13.18**Extensions:** The Access Provider shall permit the Access Seeker, at the Access Seeker's cost, to extend Network Facilities of the Access Provider as may reasonably be required to meet the Access Seeker's requirements in the circumstances and to the extent technically feasible.

5.13.19**Cost:** The utility costs in respect of the Network Facility as contemplated in this section 5.13 shall be apportioned (in accordance with fair and equitable principles) against the utility costs charged to other Operators at the relevant location.

PART B – DOMINANT OPERATOR OBLIGATIONS

5.13.20**Conditional supply:** A Dominant Operator shall not require an Access Seeker to acquire other services or facilities from the Access Provider as a condition of providing access to a Network Facility or Network Service under this Standard. For example, a Dominant Operator shall not make access to a Network Facility conditional on the acquisition of a Network Service (such as transmission services) or any other service (eg a maintenance service).

5.14 BILLING AND SETTLEMENT OBLIGATIONS

PART A –OPERATOR ACCESS OBLIGATIONS

- 5.14.1 **Invoices:** An Access Provider shall use its best endeavours to issue to the Access Seeker an invoice in writing or electronic form (as requested by the Access Seeker) within fourteen (14) calendar days of the end of the Billing Period for amounts due in respect of the supply of Network Services or Network Facilities during such Billing Period.
- 5.14.2 **Currency:** An Access Provider shall state all Invoices in Malaysian Ringgit.
- 5.14.3 **Billing Cycle:** An Access Provider shall issue Invoices in monthly Billing Cycles, unless otherwise agreed with the Access Seeker.
- 5.14.4 **Billing Verification Information:** An Access Provider shall provide, with each Invoice, such information as may be reasonably necessary for the Access Seeker to verify rates and charges contained in an Invoice.
- 5.14.5 **Other Billing Information:** An Operator must provide to any Operator with which it interconnects, information within its possession that is necessary to allow the other Operator to provide accurate and timely billing services to itself, its affiliates or other Operators.
- 5.14.6 **Summarised invoice and billing information:** An Access Provider shall provide, at the Access Seeker's request, the Access Seeker with an aggregated summary of billings for access to the Network Services and Network Facilities provided to the Access Seeker, in monthly tranches.
- 5.14.7 **Time for Payment:** An Access Provider shall allow an Access Seeker no less than thirty (30) days from the date of receipt of an invoice for the Access Seeker to pay an Invoice. This subsection 5.14.7 is not to be construed as preventing an Access Provider granting a discount to an Access Seeker as an incentive to make early payments.
- 5.14.8 **Method of Payment:** An Access Provider shall allow an Access Seeker to pay an Invoice by bank cheque or electronic funds transfer directly to an account nominated by the Access Provider.
- 5.14.9 **No set-off:** An Access Provider may not set-off Invoices, except where the Access Seeker is in liquidation.

5.14.10 Withholding of disputed amounts: An Access Provider shall allow an Access Seeker to withhold payment of any amount disputed in good faith by the Access Seeker if:

- (a) the Access Seeker notifies the Access Provider within twenty one (21) days of the date of receipt of the Invoice of such dispute; and
- (b) the Access Seeker's notification specifies the information referred to in subsection 5.14.12.

5.14.11 Billing Disputes: An Access Provider shall allow an Access Seeker to dispute an Invoice if:

- (a) the Access Seeker notifies the Access Provider within six (6) months after the date of receipt of such Invoice; and
- (b) the Access Seeker's notification specifies the information referred to in subsection 5.14.12.

5.14.12 Billing dispute notification: An Access Provider may require an Access Seeker to provide the following information when disputing an Invoice:

- (a) the reasons for which the Invoice is disputed;
- (b) the amount in dispute; and
- (c) the details of the disputed Invoice.

5.14.13 Billing dispute resolution: An Access Provider must comply, and may require an Access Seeker to comply, with the Dispute Resolution Procedures applicable to billing disputes as set out in Annexure A.

5.14.14 Interest: An Access Provider may charge interest on any amount from time to time outstanding from an Access Seeker in respect of that overdue sum for the period beginning on its due date and ending on the date of the receipt of the overdue sum by the Access Provider. The interest that may be charged by the Access Provider shall be at a fluctuating rate per annum which does not exceed the sum of one (1%) percent above the Malayan Banking Berhad's Base Lending Rate prevailing from time to time during that period.

5.14.15**Backbilling:** An Access Provider may include omitted or miscalculated charges from an Invoice in a later Invoice, provided that the Access Provider is able to substantiate the charges to the Access Seeker and the inclusion or amendment is made within three (3) months of the issuing of the original Invoice in which the omitted or miscalculated charges should have been included.

PART B – DOMINANT OPERATOR OBLIGATIONS

Nil

5.15 OPERATIONS AND MAINTENANCE OBLIGATIONS

PART A –OPERATOR ACCESS OBLIGATIONS

- 5.15.1 **Operations & Maintenance Responsibility:** Each Operator shall be responsible for the operations and maintenance of its own Network Facilities and Network Services.
- 5.15.2 **Fault reporting systems:** Each Operator shall establish and maintain a fault reporting service that allows customers who are directly connected to the Network of that Operator and to whom that Operator supplies access services (inter alia), to report faults relating to any Network or support system.
- 5.15.3 **Customer notification:** Each Operator will advise all of its directly connected customers to report all faults to the fault reporting service described in subsection 5.15.2.
- 5.15.4 **Non-discriminatory fault reporting and identification:** An Operator shall perform fault reporting and identification on a non-discriminatory basis.
- 5.15.5 **Cross-referrals:** If a customer reports a fault to an Operator:
- (a) when the Customer is directly connected to another Operator; or
 - (b) which clearly relates to a Network or support system of another Operator,
- that Operator must promptly inform the other Operator of the reported fault.
- 5.15.6 **Network fault responsibility:** The Operator in whose Network the fault occurs is responsible for rectifying it and restoring services.
- 5.15.7 **Transmission services faults:** The Operator that supplies transmission services is responsible for maintaining and repairing that transmission service, notwithstanding that the transmission service may be used in another Operator's Network.
- 5.15.8 **Major inter-working faults:** If a major fault occurs which affects a communication that crosses or is to cross both Operator's Networks, initial

responsibility for identifying the fault rests with the Operator who first becomes aware of the fault.

5.15.9 Faults affecting other Networks or Equipment: If an Operator identifies a fault occurring in its Network or with its Network Facility which may have an adverse effect on the other Operator's Network, Network Facilities, Network Services or Equipment, the first-mentioned Operator must promptly inform the other Operator of:

- (a) the existence of the fault;
- (b) the actions being taken by the first mentioned Operator to restore service and to further identify and rectify the fault; and
- (c) the outcome of those actions.

5.15.10 Bear own costs: Each Operator is responsible for establishing and maintaining a fault reporting service at its own cost irrespective of the location of the fault.

5.15.11 Fault priority: Each Operator shall give priority to faults which have:

- (a) the highest service loss impact in terms of the number of customers affected; or
- (b) those which have been reported on previous occasions and have re-occurred of a similar nature.

5.15.12 Fault rectification: Each Operator shall rectify faults on a non-discriminatory basis.

5.15.13 Target times: Each Operator shall respond to and rectify faults of a type listed in the following table in accordance with the relevant response and rectification time frames:

Fault type	Response time	Rectification time
All faults	<i>[insert after Public Inquiry]</i>	<i>[insert after Public Inquiry]</i>

5.15.14**Planned maintenance:** If an Operator (**Maintenance Operator**) intends to undertake planned maintenance which may affect an Access Seeker's Network, the Maintenance Operator must:

- (a) provide at least ten (10) Business Days notice of the planned maintenance; and
- (b) use its reasonable endeavours to minimise any disruption to the carriage of communications which cross or are to cross both Operators' Networks, and which are caused by the maintenance or re-routing; and
- (c) where practicable and agreed by the Operators, provide alternative routing or carriage at no additional cost to the Access Seeker.

5.15.15**Planned maintenance windows:** An Operator shall undertake planned maintenance within windows of time agreed with other Operators, and where the windows of time for such planned maintenance have the least affect on end-users.

PART B – DOMINANT OPERATOR OBLIGATIONS

5.15.16**Hours of fault reporting and rectification:** A Dominant Operator shall maintain a twenty-four (24) hours a day, seven (7) days a week fault reporting and rectification service.

5.16 TECHNICAL OBLIGATIONS

PART A –OPERATOR ACCESS OBLIGATIONS

5.16.1 **Compliance:** Operators shall comply with the guidelines set out in applicable Regulations, to the extent that they have not been expressly revoked or are not inconsistent with any technical obligations set out in this Standard.

5.16.2 **Prevention of technical harm:** An Operator must take reasonable measures to ensure that the interconnection does not cause physical or technical harm to the other Operator's network.

5.16.3 **Technical standards:** An Operator must comply with any applicable technical standard adopted by the Commission under Chapter 3 of Part VII of the CMA.

5.16.4 **No Interference:** An Operator must not do anything, or knowingly permit any third person to do anything, in relation to a Network Facility, Network Service or Equipment which:

- (a) causes interference; or
- (b) materially obstructs, interrupts or impedes the continuous use or operation of,

the Network Facilities, Network Services or Equipment of another Operator.

5.16.5 **Notice of interference and rectification:** If an Operator (**Notifying Operator**) notifies another Operator that the other Operator's Network Facility, Network Service or Equipment is causing interference to the Notifying Operator's Network Facility, Network Service or Equipment:

- (a) the other Operator shall rectify the situation so that no interference is caused within twenty four (24) hours of receiving notice from the Notifying Operator; or
- (b) if the other Operator is not able to locate the source of the interference within twenty four (24) hours under paragraph 5.16.5(a), the other Operator shall promptly notify the Notifying Operator, and both Operators shall meet within twenty four (24) hours of such notice and jointly examine each other's Network Facility, Network Service or Equipment to locate the source of the interference.

5.16.6 **Handover principles:** An Operator shall handover interconnected calls to the other Operator as follows:

- (a) Equal Access Service Calls shall be handed over on a Near End Handover basis;
- (b) Calls to Toll Free Numbers shall be handed over on a Near End Handover basis;
- (c) Calls to a Calling Card Service shall be handed over on a Near End Handover basis;
- (d) Calls to an Information Service shall be handed over on a Near End Handover basis;
- (e) Calls from a mobile number to another mobile number shall be handed over on a Near End Handover basis;
- (f) Calls to a Premium Rate Service shall be handed over on a Far End Handover basis; and
- (g) Calls from a fixed number to a mobile number shall be handed over on a Near End Handover basis.

5.16.7 **CLI:** For the purpose of billing reconciliation and call charge verification, Operators will provide CLI to each other subject to CLI being forwarded to it from another network with which its network is interconnected.

5.16.8 **Dummy CLIs:** An Operator must route a Customer's original CLI and must not translate numbers, use dummy numbers or dummy CLI, or use any means to alter numbers which may confuse or have the tendency to confuse the other Operator's Network (including transit networks) or billing systems. Where technical problems for routing or billing so demand, then the use of dummy numbers shall only be permitted as is agreed between the Operators.

5.16.9 **Quality of service:** *[A subsection relating to quality of service may be inserted following the Public Inquiry]*

PART B – DOMINANT OPERATOR OBLIGATIONS

Nil

5.17 TERM, SUSPENSION AND TERMINATION OBLIGATIONS

PART A –OPERATOR ACCESS OBLIGATIONS

5.17.1 **Term:** An Operator shall enter into Access Agreements with a term of no less than ten (10) years from the date of execution of the access agreement.

5.17.2 **Term of supply:** Unless otherwise agreed, an Access Provider shall only require an Access Seeker to acquire access to individual Network Services and Network Facilities under an Access Agreement for a minimum period as follows:

Network Service/Network Facility	Minimum term
Access services (eg originating and terminating access)	No minimum term
Transmission services	12 months
Network Facilities Access	5 years

5.17.3 **Termination circumstances:** An Access Provider may only terminate an Access Agreement if any of the circumstances referred to in paragraphs 5.17.3(a), 5.17.3(b) or 5.17.3(c) apply and the Access Provider has notified the Access Seeker that it will terminate in no less than thirty (30) days:

- (a) where the Access Seeker has materially breached the agreement and the Access Provider has notified the Access Seeker that it will terminate in no less than thirty (30) days if the Access Seeker has not remedied its breach by the end of that period;
- (b) where the Access Seeker has become insolvent; or
- (c) where continued operation of the access agreement or access to any Network Facility or Network Services provided under is or will be unlawful.

5.17.4 **Suspension:** An Access Provider may only suspend access to any Network Facility or Network Services in the following circumstances:

- (a) the Access Seeker's Network Facilities materially adversely affect the normal operation of the Access Provider's Network, or are a material threat to any person's safety;
- (b) the Access Seeker's Network Facilities or the supply of a Network Service pose an imminent threat to life or property of the Access Provider, its employees or contractors;
- (c) the Access Seeker's Network Facilities cause or are likely to cause material physical or technical harm to any Network Facilities of the Access Provider or any other person.

PART B – DOMINANT OPERATOR OBLIGATIONS

5.17.5 **Approval:** Prior to terminating or suspending an Access Agreement or Access to any Network Facility or Network Services provided under it, a Dominant Operator must inform the Commission in writing of the action the Dominant Operator proposes to take and the reasons why such action is appropriate. The Dominant Operator shall not terminate or suspend the Access Agreement or Access to any Network Facility or Network Services provided under it until such time, and on such conditions, as the Commission may specify.

5.17.6 **Post-termination fees:** A Dominant Operator shall not recover any additional charges, costs or expenses on termination or suspension of an Access Agreement or Access to any Network Facility or Network Services provided under it except:

- (a) charges invoiced in arrears and not yet paid; or
- (b) charges arising during an applicable minimum contractual period (as described in subsection 5.17.2).

5.17.7 **Upfront charges refund:** On termination of an Access Agreement or Access to any Network Facility or Network Services provided under it, the Dominant Operator shall refund to the Access Seeker all amounts paid in advance to the extent that the amount (or part of the amount calculated on a pro-rata basis) relate to the period after the date of effect of such termination.

5.17.8 **Deposits and guarantees:** Notwithstanding the obligation in subsection 5.17.7, the Dominant Operator shall:

- (a) within sixty (60) days of termination of the Access Agreement refund to the Access Seeker any deposit paid; and
- (b) immediately upon termination of the Access Agreement unconditionally waive any rights under any guarantees provided by the Access Seeker.

5.18 LEGAL BOILERPLATE OBLIGATIONS

PART A –OPERATOR ACCESS OBLIGATIONS

- 5.18.1 **Obligation to supply:** Each Operator shall have an absolute obligation to supply access to the Network Facility or Network Service. Such obligation shall not be conditional upon the use of that Operator's reasonable or best endeavours.
- 5.18.2 **Mutual Compensation:** An Operator must establish mutually acceptable compensation arrangements with the other Operator (including bill-and-keep arrangements).
- 5.18.3 **Interconnect Steering Group:** each Operator must appoint a representative to an Interconnect Steering Group (and such other working groups as may be agreed upon) to manage the smooth and timely implementation of the terms of Access Agreements.
- 5.18.4 **Dispute Resolution:** An Operator must comply with the Dispute Resolution Procedures set out in Annexure A.
- 5.18.5 **Complete Charges:** Each Operator shall specify all Charges in an Access Agreement and shall not attempt to recover any other costs, expenses or charges which are not specified in the Access Agreement except where such work is to be done on a time and materials basis in which case the Access Provider shall do such work in accordance with a quotation agreed with the Access Seeker as set out in the Standard.
- 5.18.6 **Intellectual Property:** Each Operator shall licence to the other Operator under an Access Agreement on a royalty-free, perpetual basis, all Intellectual Property rights necessary for the ongoing operation of the Access Agreement and the inter-operability of the Operators' Networks, subject to any relevant third-party licences.
- 5.18.7 **Security review:** An Operator may only review the security provided to it by another Operator in accordance with subsection 5.3.8 during the term of an Access Agreement if there has been a material change in circumstances in relation to the other Operator's creditworthiness.
- 5.18.8 **Additional security:** If subsection 5.18.7 applies, an Operator may only request additional or substitute security from another Operator in a manner

consistent with that which would apply if the other Operator was making a new request for access under subsection 5.3.

5.18.9 **Assignment:** An Operator's right to assign its rights under an access agreement prepared by it shall be reciprocal with the other Operator's rights of assignment.

5.18.10 **Review:** An Operator shall specify in an Access Agreement prepared by it that such Access Agreement shall be reviewed:

- (a) if the Commission issues a direction or determination relating to its subject matter;
- (b) if the Minister issues a direction or determination relating to its subject matter; or
- (c) if the CMA is amended in relation to its subject matter.

5.18.11 **Costs and expenses:** Each Operator shall bear its own costs and expenses in relation to the preparation, negotiation and execution of an Access Agreement to which they are parties.

5.18.12 **Applicable laws:** An Operator shall include a provision in all Access Agreements prepared by it that provides that the Agreement will be governed by the laws of Malaysia and that Operator will comply with all applicable directions issued by the Malaysian regulatory authorities.

PART B – DOMINANT OPERATOR OBLIGATIONS

5.18.13 **Reciprocity:** A Dominant Operator must offer to acquire access to Network Services and Network Facilities on the same terms that it provides Access to those Network Services and Network Facilities.

CHAPTER 6 : STANDARD COMPLIANCE AND ADMINISTRATION

6.1 ENFORCEMENT OF THE STANDARD

6.1.1 **Legislative Background:** The CMA governs:

- (a) the manner in which the Commission may develop and apply the Standard; and
- (b) the operation of the Standard.

6.1.2 **Mandatory standard:** Compliance with this Standard is mandatory.

6.1.3 **Compliance directions from the Commission:** The Commission may direct persons or a class of persons to comply with this Standard.

6.1.4 **Content obligations and Commission directions:** In respect of Content obligations contained in subsections 5.4 to 5.17 of this Standard, the Commission may make a direction with the effect of:

- (a) requiring a person to incorporate particular content into their Access Reference Document; or
- (b) requiring a person to comply with the obligation itself, irrespective of whether it is contained in the Access Reference Document or not; or
- (c) both.

6.1.5 **Failure to comply with direction:** Failure to comply with a direction of the Commission which requires compliance with the Standard exposes the person who received the direction to a penalty under the CMA.

6.1.6 **Effect of compliance:** Compliance with this Standard immunises from prosecution the person who is subject to the Standard in respect of a matter dealt with by this Standard.

6.2 IMPLEMENTATION OF THE STANDARD

6.2.1 **Negotiating benchmark:** An Operator must comply with the Standard when entering into Access Agreements.

- 6.2.2 **Undertakings:** An Operator must comply with this Standard when lodging an undertaking with the Commission under section 110 of the CMA.
- 6.2.3 **Dispute resolution:** Operators may rely upon the Standard when making submissions during dispute resolution under the Dispute Resolution Procedures or under section 151 or subsection 229(1) of the CMA.
- 6.2.4 **Existing agreements:** Parties to existing Access Agreements executed prior to the Effective Date must review such Access Agreements to ensure compliance with this Standard. Such Access Agreements should be amended according to the requirements of the Standard within a reasonable period of time after the Effective Date, as the Commission may direct. If the parties are unable to agree to the terms of such amendment, either party may notify a dispute in accordance with Chapter 7 of Part V of the CMA.
- 6.2.5 **Registration of new Access Agreements:** When considering an application for registration of an Access Agreement or an undertaking, the Commission will review the agreement and undertaking (as the case may be) for compliance with (without limitation):
- (a) the CMA; and
 - (b) this Standard; and
 - (c) the descriptions of the Network Services and Network Facilities (where applicable) on the Access List.

6.3 COMPLIANCE REVIEW

- 6.3.1 **General compliance review:** Assessment by the Commission for compliance with this Standard may occur at any time:
- (a) by formally requesting information from a relevant Operator (for example, under Chapter 5 of Part V of the CMA); or
 - (b) by auditing Operators for compliance from time to time (for example, under Chapter 4 of Part V of the CMA);
- 6.3.2 **Specific compliance:** The Commission may also check for compliance with this Standard in the following circumstances, without limitation:

- (a) at the time the Commission is considering an Access Agreement for registration, the Commission may check the Access Agreement for compliance with the Standard;
- (b) upon the notification of a dispute the Commission may check for compliance with the Standard in such a way that may allow the Commission to resolve the dispute in accordance with or consistently with the Standard; and
- (c) the Commission may check an undertaking for compliance with the Standard when assessing an undertaking lodged by an Operator.

6.4 TRANSITIONAL MEASURES

6.4.1 **Notice procedures for removal / replacement:** If the Commission removes, varies or replaces a Network Facility or Network Service on the Access List under section 146 or section 147 of the CMA, and an Access Provider wishes to terminate or change the terms of the supply of that facility or service, the Access Provider must provide notice of its intention to terminate or vary to all Access Seekers to whom it is supplying that facility or service.

6.4.2 **Notice period:** The notice period referred to in subsection 6.4.1 must be no shorter than the longer of:

- (a) the period of time between the time of giving the notice and the time at which the Access Provider is proposing to no longer provide the Network Facility or Network Service to itself; or
- (b) 12 months.

6.4.3 **Contents of notice of variation or replacement:** The notice to be provided by the Access Provider under subsection 6.4.1 when the Commission varies, removes or replaces the Network Facilities or Network Services on the Access List, must state:

- (a) when the variation or replacement will come into effect; and
- (b) how the variation or replacement is likely to affect the Access Seeker; and

- (c) any alternative Network Facilities or Network Services that may be available to be provided by the Access Provider to the Access Seeker and the terms and conditions of such alternative arrangements.

6.4.4 **Declaration of dominance:** If an Operator who previously not Dominant is declared dominant under section 137 of the CMA, then the relevant provisions of this Standard as they apply to Dominant Operators (**Dominant Operator Provisions**) shall commence to apply to such Operators within a reasonable period of time after such declaration of dominance that the Commission may direct and the Dominant Operator shall, where relevant, amend those Access Agreements to which it is a party in order to comply with the Dominant Operator Provisions.

6.4.5 **Effect on existing interconnect agreements:** Operators will be given a reasonable period of grace to enable them to renegotiate the terms of their interconnect agreements to ensure compliance with this Standard.

6.5 REVIEW OF THE STANDARD

6.5.1 **Purpose:** The purpose of this subsection of the Standard is to outline some of the circumstances under which the Standard may be reviewed by the Commission. It is not an exhaustive list of the Commission's powers of review.

6.5.2 **General review:** The Commission will review this Standard:

- (a) at least once every three (3) years; and
- (b) as and when the Minister so directs under section 7 of the CMA; and
- (c) as and when the Commission considers it necessary in order to pursue or preserve the goals of the Standard and the CMA.

6.5.3 **Specific review:** The Commission may review the operation of the Standard on the occurrence of one or more of the following events:

- (a) where the Minister exercises his power to modify, vary or revoke directions (under section 8, Part II of the CMA) determinations (under section 11, Part II of the CMA) and declarations (under section 14, Part II of the CMA);

- (b) where the Commission exercises its power to modify, vary or revoke a direction (under section 52 of the CMA) or determination (under section 56 of the CMA);
- (c) where the Commission exercises its power (under section 101 of the CMA) to revoke a voluntary industry code, on the basis that it is satisfied that the voluntary industry code is no longer consistent with the objects of the CMA, any relevant instrument made under the CMA, or any relevant provisions of the CMA;
- (d) where the Commission exercises its power to add or remove Network Services or Network Facilities or other specified facilities or services to or from the Access List (under section 146 of the CMA);
- (e) where the Commission exercises its power (under section 106 of the CMA) to determine the modification, variation or revocation of a mandatory standard on the basis that it is satisfied that the mandatory standard is no longer consistent with the objects of the CMA, any relevant instrument made under the CMA, or any relevant provisions of the CMA;
- (f) where an industry forum submits a new voluntary industry code to replace an existing one for that industry (under section 102 of the CMA);
- (g) where a licensee is determined to be dominant under section 137 of the CMA;
- (h) where any event occurs which may alter the general principles of access (For example, this may occur in the course of dispute resolution, if it becomes apparent that a matter in the Standard should be revised or when a new issue arises); or
- (i) where an exogenous development occurs which warrants a review by the Commission of the Standard (For example, this may occur due to technological change).

6.5.4 **Request for Review:** Any person may request the Commission to modify any provision of the Standard by submitting a notice to the Commission specifying.

- (a) the provisions of the Standard that it seeks to have eliminated, modified or added;
- (b) a clear statement of the reasons why the person believes that such action is justified; and
- (c) alternative approaches that, if adopted, would achieve the Commission's stated goals in a more efficient and effective manner.

6.5.5 **Assessment of request for review:** In assessing a petition under subsection 6.5.4, the Commission will take account of all relevant factors, including:

- (a) whether a review is justified on the basis submitted by the person;
- (b) the period of time since the last review of the Standard;
- (c) the objects of the CMA; and
- (d) any other factor that the Commission considers relevant.

6.5.6 **Review process:** In accordance with the CMA, a review of the Standard by the Commission will involve the following key stages:

- (a) **Public notice:** the Commission will issue a public notice to announce that a review of the Standard is to take place. This notice will detail the scope of the review, the matters to be considered in the review, the stages in the review process and the time-line for the review (including the period in which public comment will be accepted by the Commission).
- (b) **Public comment:** after a public notice of the review has been issued, the Commission shall (for a specified period) accept public comment and submissions regarding the review of the Standard.
- (c) **Internal review:** upon the completion of a period of public comment, the Commission will commence an internal review of the Standard. This will include assessing the public or external comment received during the review process and will aim to generate an issues list and a set of draft proposed changes to the Standard.

- (d) **Draft changes to the Standard:** once the Commission completes its internal review of the Standard, it may publish its draft proposed changes to the Standard in order to receive final public comment regarding the review.
- (e) **Finalisation:** once the draft changes to the Standard have been publicly issued and a period for final public comment and review has lapsed, the Commission may finalise the proposed changes to the Standard.

6.5.7 **Outcome of a review:** Following a review, the Commission may or may not choose to modify, vary or revoke the Standard in accordance with sections 56(2) and 106 of the CMA.

6.6 REVOCATION

6.6.1 The following documents are hereby revoked:

- (a) General Framework for Interconnection and Access of 17 May 1996 issued by the Director General of the then Jabatan Telekomunikasi Malaysia;
- (b) Telecommunications Regulatory Determination - Customer Access Arrangement (TRD001/98) of 24 May 1998 issued by the Director General of the then Jabatan Telekomunikasi Malaysia;
- (c) The following parts of the Determination of Cost Based Interconnect Prices and the Cost of Universal Service Obligations (TRD006/98) of 15 July 1998 issued by the Director General of the then Jabatan Telekomunikasi Malaysia:
 - (i) The sections under the heading Equal Access in paragraph 1.4;
 - (ii) Paragraph 1.5;
 - (iii) Paragraph 1.6;
 - (iv) Paragraph 2.1.5; and
 - (v) Paragraph 2.1.6

ANNEXURE A: DISPUTE RESOLUTION PROCEDURES

1. Introduction

- 1.1 Subject to subsection 1.2.3, an Access Provider and an Access Seeker shall adopt and comply with this Dispute Resolution Procedure in relation to any dispute which may arise between an Access Seeker and Access Provider in relation to or in connection with the supply of Network Services, Network Facilities and any other facilities or services to which the Standard applies (**Access Dispute**).
- 1.2 The following Dispute Resolution mechanisms are discussed in this section:
 - 1.2.1 inter-party working groups;
 - 1.2.2 interconnect steering group; and
 - 1.2.3 subject specific resolution of disputes, being:
 - (a) technical disputes (which must follow the procedure set out in section 5 of this Annexure if they cannot be resolved through the application of the general dispute resolution provisions in sections 3 and 4 of this Annexure);
 - (b) Billing Disputes (as defined in subsection 6.19), which must follow the procedures set out in section 6 of this Annexure; or
 - (c) any other types of disputes, which, if the dispute cannot be resolved through the application of the general dispute resolution provisions in sections 2, 3 and 4 of this Annexure, must be referred to the Commission for adjudication.
- 1.3 An Access Provider or an Access Seeker shall always be entitled to seek resolution of the dispute by the Commission in accordance with sections 151 and 229 of the CMA (as may be the case) and an Access Provider shall not prevent the Access Seeker from adopting the Dispute Resolution Procedure provided in these sections of the CMA.
- 1.4 For clarification, unless stated otherwise, all references to sections, subsections and paragraphs in this Annexure are references to sections, subsections and paragraphs of this Annexure.

2. General

- 2.1 Until expiry of these Dispute Resolution Procedures, an Operator may not commence court proceedings relating to that dispute, other than an application for urgent interlocutory relief. Nothing in this subsection shall be construed as ousting the jurisdiction of any court.
- 2.2 An Operator shall ensure that its representatives acting in relation to a dispute has the authority to settle an Access Dispute on behalf of the Operator. If in the course of the Dispute Resolution Procedure it is identified that the matters to be resolved are outside the initial term of reference for which authority was given to the representative, an Operator may require that those matters be referred to more senior officers of that Operator who have authority to settle those matters.
- 2.3 During a dispute and any Dispute Resolution process invoked in accordance with this Annexure, an Access Provider and Access Seeker must continue to fulfil their obligations under the agreement between them.
- 2.4 Subject to subsection 2.5, the parties to a dispute shall exchange information of a type described in this Standard during the course of, and to facilitate, resolution of such a dispute.
- 2.5 Confidential Information of a party which is disclosed, and any other oral or written submissions made by a party or a party's representatives during the course of any Dispute Resolution process will be subject to the confidentiality restrictions in relevant confidentiality provisions contained in the Confidentiality Agreement prepared in accordance with subsection 5.3.7 of the Mandatory Standard on Access (**the Standard**).
- 2.6 A party must not use information obtained under subsection 2.4 or described in subsection 2.5 above for any purpose other than to resolve the dispute.

3. Inter-party working group

- 3.1 In the first instance the Access Seeker and Access Provider should attempt to resolve the Access Dispute between themselves.
- 3.2 An Access Provider and Access Seeker shall establish a working group, or working groups, to fulfil the requirements of subsection 3.1.

- 3.3 The Access Provider shall provide for:
- (a) subject areas dealt with by each working group;
 - (b) equal representation by the Access Seeker and the Access Provider;
 - (c) chairmanship and administrative functions of the working group to be shared equally; and
 - (d) formal notification procedures to the working group.
- 3.4 The Access Provider and the Access Seeker shall use reasonable endeavours to attempt to settle an Access Dispute in the working group context for a period of no longer than forty five (45) days, subject always to a party's right to seek urgent interlocutory relief.

4. Interconnect steering group

- 4.1 In the event that the parties cannot resolve the dispute between themselves within the time specified in subsection 3.4, or after any time extension has expired, either party may give ten (10) Business Days written notice (**Notice Period**) to the other Party stating its intention to escalate the issue and outlining the details of the issue. If the issue is not resolved prior to the expiry of the Notice Period, then either Party may notify the other Party (**Receiving Party**) that it wishes to refer the issue to the Interconnect Steering Group (**ISG**).
- 4.2 In the event that a dispute is referred to an ISG under clause 4.1, the Parties shall promptly form a committee comprising the ISG with an equal number of appropriate representatives from each Party.
- 4.3 The ISG to which an issue has been raised will meet within ten (10) Business Days of the receipt by the Receiving Party of a notice under clause 4.1.
- 4.4 If the ISG has not resolved a dispute within twenty (20) Business Days after it first meets to review that dispute under clause 4.3, either Party may:
- (a) refer any technical dispute to a Technical Expert in accordance with section 5 of this Annexure; or
 - (b) refer the dispute to the Commission for final arbitration.

5. Use of a Technical Expert

- 5.1 A dispute will only be referred to a Technical Expert if the provisions of section 4 have been complied with.
- 5.2 Once a dispute is referred to a Technical Expert, it may not be referred back to a Working Group or Interconnect Steering Committee.
- 5.3 The Technical Expert:
- (a) will be an expert appointed by agreement of the Parties or, if the parties cannot agree, by the Commission;
 - (b) will have the appropriate qualifications and experience to arbitrate the dispute, including knowledge of the communications industry;
 - (c) need not be a Malaysian citizen or resident; and
 - (d) will not be an officer, director, or employee of a communications company or otherwise have a potential for conflict of interest.
- 5.4 If the Parties fail to appoint an Expert within ten (10) Business Days of notice of the need to refer a dispute to a Technical Expert, a Technical Expert will be appointed by the Commission.
- 5.5 When relying on the services of a Technical Expert, the following procedure will apply to the dispute resolution procedure of the Technical Expert:
- (a) the Parties will present written submissions to the Expert and each other within fifteen (15) Business Days of the appointment of the Expert; and
 - (b) each Party may respond to the other Party's submission in writing within fifteen (15) Business Days of the date of the other Party's submission.
- 5.6 At the request of either Party and subject to the Parties agreeing or the Expert deciding within five (5) Business Days of the last written submission that the use of the Expert Committee be by documents only, an Expert Committee hearing will be held within fifteen (15) Business Days of the last written submission.

- 5.7 Should a Technical Expert dispute resolution procedure hearing be held, each Party will have the opportunity of making an oral submission. This process will be conducted in private.
- 5.8 The procedure for hearing technical disputes will be determined by the Technical Expert (including number and duration of oral submissions by the Parties) but in any case, the Technical Expert's hearing will last no longer than three (3) Business Days.
- 5.9 The Technical Expert will not have the power to appoint any other Experts.
- 5.10 The Technical Expert will deliver his award within fifteen (15) Business Days of the hearing or of the last written submission where the Arbitration is by documents only.
- 5.11 Every dispute referred to a Technical Expert will be considered separately so that time limits for each dispute are complied with.
- 5.12 The Technical Expert's decision will be binding on the Parties (in the absence of manifest error of fact or law).

6. Billing dispute resolution

- 6.1 As outlined in the billing provisions of the Standard at subsection 5.14, a Party (**the Invoicing Party**) shall provide to the other Party (**the Invoiced Party**) an invoice in writing, or in such electronic form as may be agreed from time to time, for amounts due in respect of the supply of Services during such Billing Period.
- 6.2 If the Invoiced Party wishes to dispute in good faith an invoice prepared by the Invoicing Party (**Billing Dispute**), the Invoiced Party must notify the Invoicing Party in writing (**Billing Dispute Notice**) within fourteen (14) Calendar Days after the date of that invoice (**Billing Dispute Notification Period**). Such notices must be sent to the Billing Representatives nominated in subsection 6.16 below.
- 6.3 A Billing Dispute may only arise where the Invoiced Party has reasonable grounds to believe that an error has arisen from one of the following circumstances:

- (a) the Invoicing Party's Billing System is, or has been, defective or inaccurate in respect of the recording of the Calls which are the subject of the dispute;
- (b) there is, or has been, a discrepancy between the invoice in dispute and the records generated by the Invoicing Party's Billing System;
- (c) there is, or has been, a fraud perpetrated by the Invoicing Party; or
- (d) the Invoicing Party has made some other error in respect of the recording of the Calls or calculation of the Charges which are the subject of the Billing Dispute.

6.4 A Billing Dispute Notice given under this section 6 must specify:

- (a) the reasons for which the Invoiced Party disputes the invoice;
- (b) the amount in dispute; and
- (c) details required to identify the relevant invoice and Charges in dispute including:
 - (i) the account number;
 - (ii) the invoice reference number;
 - (iii) the invoice date;
 - (iv) the invoice amount; and
 - (v) billing verification information.

6.5 For the avoidance of doubt, no invoices may be disputed after the expiration of the Billing Dispute Notification Period.

6.6 The Invoiced Party agrees to pay the undisputed portion of any invoice in accordance with the normal payment procedures set out in subsection 5.14 of the Standard. If the dispute is resolved against the party initiating the dispute, that party shall be required to pay interest at the rate specified in subsection 5.14.14 of the Standard on the amount payable by the Invoiced Party.

- 6.7 Where the Invoiced Party has paid an amount and subsequently notifies the Invoicing Party of a Billing Dispute in relation to that amount within the Billing Dispute Notification Period, the Invoicing Party is not obliged to refund any or all of that amount until the Billing Dispute is resolved in respect of that amount. The Invoicing Party is not required to pay interest on any amount refunded under this section 6.
- 6.8 The Parties agree to use their reasonable endeavours to promptly resolve any Billing Dispute notified under this section 6.
- 6.9 If the Parties are unable to resolve any Billing Dispute within thirty (30) calendar days (or such other period as the Parties may agree) from the date on which the Billing Dispute Notice is received, either Party may seek the consent of the other Party to extend the period for resolution of the Billing Dispute stating the exceptional reasons for such extension. The other Party is, however, under no obligation to agree to such extension.
- 6.10 To the extent that a Billing Dispute notified under this section involves a Billing Dispute with an international correspondent of the Invoicing Party, the Dispute Resolution Procedures shall be suspended for a reasonable period of time pending resolution of the dispute with that international correspondent. As a general rule, the period of suspension will not exceed six (6) months. However, the Parties recognise that some Billing Disputes with international correspondents may take longer to resolve, in which case the Invoicing Party must promptly inform the Invoiced Party of the likely period required for resolution.
- 6.11 Once the Negotiation Period and any extension granted under subsection 6.10 has expired, the Billing Dispute may be referred by the Invoiced Party to the procedure described in subsection 6.12 (**Billing Dispute Escalation Procedure**).
- 6.12 The Invoiced Party may refer a Billing Dispute to the Billing Dispute Escalation Procedure under this subsection 6.12 by notifying the Invoicing Party's Billing Representative. Each of the Parties shall then appoint a designated representative that has authority to settle the Billing Dispute, and that is at a higher level of management than the persons with direct responsibility for administration of this Standard. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the Billing Dispute and negotiate in good faith in an effort to resolve such Billing Dispute. The specific format for such discussions will be

left to the discretion of the designated representatives, however all reasonable requests for relevant information made by one Party to the other Party shall be honoured.

- 6.13 Once any Billing Dispute has been resolved to the Parties' satisfaction, any sum to be paid or repaid shall be paid immediately by the relevant Party.
- 6.14 Although it is the good faith intention of the Parties to use the above Billing Dispute Resolution Procedures to the fullest extent to try to solve Billing Disputes, nothing in this Annexure shall prevent either Party from pursuing any other remedy in law or equity that may be available to them if a Billing Dispute cannot be resolved to their satisfaction.
- 6.15 A Party may request a joint investigation of invoice discrepancies after that Party has conducted comprehensive internal investigation, including an examination of its own Billing System. The joint investigation may include the generation of test calls to the other Party's Network.
- 6.16 Enquiries relating to Billing, collecting and settlement arrangements or in relation to Network and operation issues may be directed to the Billing Representatives nominated by each Party.
- 6.17 Either Party may at any time nominate another Billing Representative, provided that fourteen (14) Calendar Days' prior notification of such appointment is given.
- 6.18 If the Parties are unable to resolve any Billing Dispute within thirty (30) Calendar Days from any extended date as might be agreed upon under subsection 6.9 of this Annexure, or if they are unable to agree any such extension, either Party may refer the Billing Dispute to the Commission for resolution under Chapter 7 of Part V of the CMA.
- 6.19 In this section 6 of the Annexure:
 - (a) **"Billing Dispute"** means the dispute of an invoice prepared by a Party to the other Party which is made in good faith;
 - (b) **"Billing Dispute Notice"** means the written notification made by a Party to the other Party in relation to a Billing Dispute;

- (c) **“Billing Dispute Notification Period”** means the fourteen (14) day period after the date of an invoice which is the subject of a Billing Dispute;
- (d) **“Billing Representative”** means a representative of the Party appointed in accordance with the Billing procedures set out in subsection 6.16; and
- (e) **“Billing System”** means a system to issue invoices relating to Charges payable by each Party under the Standard.