



INDEPENDENT CONSUMER AND COMPETITION COMMISSION

**TELECOMMUNICATIONS INTERCONNECTION
CODE OF PRACTICE**

17 November 2006

Foreword

The Independent Consumer and Competition Commission ('the Commission') is a statutory authority, established under the provisions of the *Independent Consumer and Competition Commission Act 2002* ('the *ICCC Act*'). The Commission's primary objectives are to enhance the welfare of the people of Papua New Guinea ('PNG') through the promotion of competition and fair trading, and to protect the long term interests of the people of PNG with regard to price, quality and reliability of significant goods and services.

The Commission comprises one full-time Commissioner and two Associate Commissioners who may be full-time or part-time. One of the Associate Commissioners must have international experience in the operation and administration of an economic regulatory regime and be a non-resident. The Commission is independent of Government in its decision making but accountable to Parliament.

The Commission has broad powers to gather information in order to carry out its legislated functions. In addition, the Commission may require a regulated entity in a regulated industry to keep or provide certain records for specified periods and to keep or provide those records in accordance with guidelines made by the Commission.

In view of the ongoing changes to the future operating aspects of the telecommunications industry in PNG as a result of recent government decisions, it has become necessary to develop appropriate regulatory guidelines and codes of practices to ensure the interests of all parties involved in the industry are safeguarded. This Interconnection Code of Practice is one of several Codes of Practices that the Commission will develop under the *Telecommunications Act* and the *ICCC Act* respectively to regulate the provision of Access and Interconnection between Access Providers and Access Seekers in the telecommunications industry.

Competition is the key to growth and innovation in today's telecommunications markets. Interconnection is a critical factor for the viability of competition. Interconnection is an important consumer issue. Telecommunications users cannot communicate with each other or connect with services they demand unless necessary interconnection arrangements are in place. Interconnection of a multitude of different types of networks has brought tremendous benefits to consumers and businesses around the world. Increasing network interconnection will result in improvement in the convenience and utility of telecommunications services in PNG and in the wider world.

Inadequate interconnection not only impose unnecessary costs and technical problems on operators; they also result in delays, inconvenience and additional costs for businesses, consumers and ultimately for the PNG economy.

Whereas effective, efficient and timely conclusion of interconnection arrangements can positively contribute to service penetration, inadequate interconnection not only imposes unnecessary costs but also denies full telecommunications service to the detriment of businesses, consumers and ultimately the PNG economy.

This Interconnection Code of Practice sets out the framework within which operators can negotiate and conclude interconnection arrangements and agree appropriate prices and includes provision for an arbitration role for the Commission, if necessary, to ensure a fair, transparent and consistent interconnection process.

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1 Introduction, Background and Scope

1.1 Preliminary

1.1.1 Name of Code

This Code is called the Telecommunications Interconnection Code of Practice

1.1.2 Interpretation

This Code is divided into:

- (a) Chapters (e.g. Chapter 2)
- (b) Sub-chapters (e.g. Chapter 2.2)
- (c) Paragraphs (e.g. Paragraph 2.2.1)

1.1.3 Contents of this Code

The Chapters of this Code deal with the following issues:

- (a) Chapter 1 provides an introduction, background to and scope of this Code;
- (b) Chapter 2 sets out the principles applicable to the different types of Access Services and interconnection to enable the supply of those Access Services;
- (c) Chapter 3 sets out the general principles applicable to the content of an Access Agreement which should be adopted by an Access Provider. This chapter also sets out a summary of the terms and conditions from the Code which should be included in an Access Provider's Access Agreements;
- (d) Chapter 4 sets out the administrative procedures that should be included in the negotiation of an Access Agreement with an Access Provider;
- (e) Chapter 5 refers to certain economic and pricing principles including arbitration procedures adopted by the Independent Consumer and Competition Commission;
- (f) Chapter 6 sets out a glossary of terms used in this Code.

1.2 Making of Code

This Code has been made by the Independent Consumer and Competition Commission ('the Commission') pursuant to section 40 of the *Independent Consumer and Competition Commission Act 2002* ('the *ICCC Act*') and section 66A of the *Telecommunications Act 1996*.

1.2.1 Consultation

The Commission is required under section 40(3) of the *ICCC Act* to carry out a process of consultation with the Minister, any regulated entity to which the Code or rule applies or is intended to apply and such other persons or representative bodies as the Commission considers appropriate.

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This Code has been finalized after consultations with the Minister for Treasury, the Departments of Treasury and State Enterprises, Information and Communication, PANGTEL, Telikom PNG Ltd and Pacific Mobile Communications Ltd (jointly referred to as Telikom') and persons who are likely to become Access Seekers. This Code in its draft format was also made available for comment by the general public and interested stakeholders through the Commission's office at Level One, Garden City Building, Boroko and on the Commission's official website (www.iccc.gov.pg).

1.2.2 Approval of Code

This Code will take effect from the date on which it is published in the National Gazette or a later date specified by the Commission in the Code and will operate until:

- (a) a new Telecommunications Interconnection Code is approved by the Commission and is prescribed to replace this Code; or
- (b) this Code is revoked by the Commission under section 40 of the *ICCC Act*.

1.2.3 Variation of the Code

The provisions of this Code may only be varied by the Commission. Any variation comes into effect when notice of the varied code is published in the National Gazette.

1.2.4 Review of the Code

The Commission proposes to review the Code after three (3) years from the date on which the Code is first made by the Commission.

1.3 Legislative Background

This Code forms an integral part of the telecommunications regulatory regime in Papua New Guinea, the legislative framework for which is set out under the *ICCC Act* and the *Telecommunications Act* respectively. This Code is made both as a code relating to the conduct or operations of a participant in a regulated industry under section 40 of the *ICCC Act*, and as a Carrier Code of Practice under section 66A of the *Telecommunications Act*.

1.3.1 *ICCC Act* Code

The telecommunications industry is declared, by section 19A of the *Telecommunications Act*, to be a regulated industry for the purposes of the *ICCC Act*. Telikom PNG Limited has been declared to be a regulated entity under section 32 of the *ICCC Act* and is thus subject to a regulatory contract under that Act. Section 40 of the *ICCC Act* enables the Commission to make codes or rules relating to the conduct or operations of a participant in a regulated industry.

Accordingly, this Code has been made by the Commission under section 40 of the *ICCC Act*, relating to the interconnect and access conduct or operations of participants in the telecommunications industry, including carriers and other industry participants.

1.3.2 *Telecommunications Act* Code of Practice

Part VIA of the *Telecommunications Act* relates to Codes of Practice to be followed by licensees under that Act, in the course of their operations. Section 66A of that Act enables the Commission to

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determine Codes of Practice to be followed by carriers in the course of their operations, and specifically includes an Interconnection Code of Practice.

Accordingly, this Code has also been determined in writing by the Commission under section 66A of the *Telecommunications Act* to be a Code of Practice to be followed by carriers in the course of their operations.

1.3.3 Statutory Right to Access

Part XI of the *Telecommunications Act* prescribes the rights of carriers to access other carriers' networks, the Commission's role in carriers negotiating Access Agreements, arbitration of access terms and conditions in the event of disagreements and the principles that are to be applied for charging for access to a carrier's network. This Code is intended to set out the conduct and processes which are to be followed by carriers, licensees and other industry participants in giving effect to those access rights.

1.4 Scope of the Code

1.4.1 This Code has been made by the Commission with the aim of encouraging a regulated commercial relationship between Access Providers and Access Seekers in the conduct of their operations within the telecommunications industry.

1.4.2 It is the intention of the Commission that this Code will provide clear guidance to Access Providers when drafting and submitting Access Agreements and to Access Seekers when assessing the terms and conditions of an Access Agreement or a bilateral agreement proposed by an Access Provider. The Code may also be taken into account by the Commission to the extent the Commission considers it appropriate to do so, including in relation to Access Agreements or bilateral agreements in any arbitration determinations pursuant to Part XI of the *Telecommunications Act*.

1.4.3 This Code:

- (a) applies to all different types of Access and Interconnection Services, as defined in Chapter 6 on Glossary and Interpretations;
- (b) includes aspects of the contents of the Access Agreement which the Commission considers appropriate as described in 1.4.2. These aspects include the process for requesting and agreeing on the supply of Access Services, terms and conditions of Access Agreements, methods for determining the price of Access Services, and the resolution of disputes;
- (c) includes matters associated with Access Providers and Access Seekers may take into account in the negotiation of bilateral agreements in the absence of an approved Access Agreement;
- (d) includes matters associated with the requesting of and agreeing to the supply of Physical Access to Telecommunications Transmission Towers, Buildings, Masts, Ducts, Manholes, Sites of Towers or Masts and Underground Facilities; but
- (e) does not cover matters relating to technical standards and operational procedures which are appropriately covered in the Technical Interconnection Code of Practice developed by PANGTEL;

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- (f) should be read in conjunction with the Technical Interconnection Code of Practice developed by PANGTEL.

2 Services and Principles of Supply and Interconnection

2.1 Access Services

- 2.1.1 Subject to Part XI of the *Telecommunications Act*, an Access Provider must, if requested to do so by an Access Seeker, supply an Access Service and Interconnection to the Access Seeker in order that the Access Seeker can provide Carriage Service(s) and/or Content Service(s).
- 2.1.2 In providing for interconnection rights between carriers, Part XI of the *Telecommunications Act* also provides for antecedent negotiations between the Access Provider and the Access Seeker(s) to determine the terms and conditions on which access will be provided. It is commercially important, or even critical, for an Access Seeker to have concluded commercial arrangements for access and interconnection with the Access Provider in advance of the commencement of operations by the Access Seeker, which would also be in advance of the commencement of the Access Seeker's carrier licence.
- 2.1.3 To enable such negotiations to occur within a commercially sensible timeframe, an Access Provider must, if requested to do so by a Nominated Access Seeker, enter into negotiations in good faith with that Nominated Access Seeker with a view to concluding commercial arrangements for access and interconnection, to take effect as and when the Nominated Access Seeker becomes a licensed carrier.
- 2.1.4 If the Access Provider and the Nominated Access Seeker cannot agree upon the terms of an access or interconnection agreement, either party may by writing submit the matter to the Commission for arbitration under this Code. An application for arbitration under this Code may be made at any time after 30 business days from the date on which the Nominated Access Seeker first requested the Access Provider to enter into negotiations in accordance with clause 2.1.3 of this Code. Any determination made by the Commission following an arbitration in accordance with this clause 2.1.4 shall be indicative of a Commission determination as if it were made under section 84 of the *Telecommunications Act* at or after the time the Nominated Access Seeker became a licensed carrier.
- 2.1.5 For the purposes of this clause 2, "Nominated Access Seeker" means a person who has applied for a carrier licence and whom the Commission has declared is likely to be awarded a carrier licence and is thereby declared to be a Nominated Access Seeker for the purpose of conducting negotiations with an Access Provider in accordance with this Code.

2.2 Principle of Access and Interconnection

Part XI of the *Telecommunications Act* provides the terms and conditions on which Access Services must be provided by an Access Provider to an Access Seeker and an Access Agreement must be on Reasonable Terms and Conditions.

2.2.1 Reasonable Terms and Conditions

Where the Access Provider and an Access Seeker fail to reach agreement on a commercial basis as to the charges payable for Access and Interconnection Services, and the Commission is required to determine the matter pursuant to section 84 of the *Telecommunications Act*, in determining the charges for access and interconnection the Commission shall have regard to (but is not limited to) the following factors:

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- (a) whether the terms and conditions promote the long term interests of end-users of Carriage Services or of services supplied by means of Carriage Services
- (b) the legitimate business interests of the Access Provider and the Access Seeker, and the Access Provider's investment in facilities used to supply the Access Service concerned;
- (c) the directly and indirectly attributable incremental capital costs incurred by the Access Provider in connection with the provision of the access and interconnection, being a reasonable return on the written down asset base, and including economic depreciation costs associated with the asset base, for those assets used directly or indirectly to provide the access and interconnection;
- (d) the directly and indirectly attributable incremental operating costs incurred by the Access Provider in connection with the provision of the access and interconnection;
- (e) full recovery of once off incremental operational and capital costs incurred in the provision of the access and interconnection which the Access Provider would not have otherwise incurred but for the requirement to provide the access and interconnection;
- (f) the requirement for a fair and reasonable contribution to the common costs incurred by the Access Provider;
- (g) the availability and capacity of the telecommunications network operated by the Access Provider to provide the access and interconnection and the timeframe reasonably required to provide access to additional capacity;
- (h) the operational and technical requirements for the safe and reliable operation of a Carriage Service, a Telecommunications Network or a Facility in accordance with any Technical Interconnection Code of Practice determined by PANGTEL;
- (i) the economically efficient operation of a Carriage Service, a telecommunications Network or Facility; and
- (j) any other factors the Commission considers relevant.

The Commission's final determination of the charges for access and interconnection must be made available to PANGTEL and the public but must not disclose confidential data provided to the Commission by the Access Provider and Access Seeker for the purposes of its determination.

2.2.2 Non-discriminatory service supply

In supplying an Access Service, an Access Provider must treat an Access Seeker on a non-discriminatory basis as required by the *Telecommunications Act* in relation to the supply of an Access Service, including but not limited to, if requested by the Access Seeker:

- (a) taking all reasonable steps to ensure that the technical and operational quality of the service is equivalent to that which the Access Provider provides to itself; and
- (b) taking all reasonable steps to ensure that the Access Seeker receives, in relation to the service, fault detection, handling and rectification of a technical and operational quality and timing that is equivalent to that which the Access Provider provides to itself.

2.2.3 Non-discriminatory Interconnection

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In supplying interconnection, an Access Provider must treat an Access Seeker on a non-discriminatory basis in accordance with the requirements of the *Telecommunications Act* in relation to the Interconnection of Facilities, including but not limited to, if requested by the Access Seeker;

- (a) taking all reasonable steps to ensure that the technical and operational quality and timing of the Interconnection is equivalent to that which the Access Provider provides to itself; and
- (b) taking all reasonable steps to ensure that the Access Seeker receives, in relation to the Interconnection, fault detection, handling and rectification of a technical and operational quality and timing that is equivalent to that which the Access Provider provides itself.

2.2.4 Application of Non-discriminatory principles

The non-discriminatory principles referred to in paragraphs 2.2.2 and 2.2.3 are intended to promote fair competition and the long term interests of end-users of Carriage Services and services supplied by means of Carriage Services and these principles are to be implemented in a way which will:

- (a) promote competition in markets for Access Services having regard to (among other things) the extent to which relevant things will remove obstacles to end-users of Carriage Services gaining Access to Carriage Services.

The non-discrimination principles should not limit an Access Seeker's ability to request superior or lesser relevant aspects of the supply of the Access Service or Interconnection than an Access Provider provides itself, provided always that the Access Provider will not be required to accept such a request.

2.2.5 Billing Information

- (a) If an Access Seeker uses Access Services supplied by an Access Provider, the Access Provider must provide the Access Seeker billing information in connection with matters associated with, or incidental to, the supply of those Access Services in the manner described in Part XI of the *Telecommunications Act*.
- (b) the billing information provided to Access Seekers must include details about the call volumes for each call type and their associated tariffs during the billing period.

2.2.6 Customer Relationship

- (a) As a statement of general principle, a customer will be regarded as a customer of a person/corporation where the Customer has a contract or an agreement with the person to utilizes a Carriage and/or Content Service provided to that customer by the person.
- (b) It is recognized that in accordance with the principle referred to in paragraph (a), the same person may be a customer of more than one person:
 - i. in respect of different Carriage and/or Content Services provided by different persons: or
 - ii. because the customer is directly connected to one person's Network but utilizes Carriage and/or Content Services provided by another person
- (c) For the avoidance of doubt, but again as a statement of general principle, (to which there may be exemptions in special situations), the supply to the Access Seeker of Access Services which the Access Seeker than utilizes in providing Carriage and/or Content Services to its

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customers does not mean that, for the purposes of paragraph (a)(i), those customers are also customers of the Access Provider.

- (d) For the avoidance of doubt, the parties acknowledge that each party 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.

2.3 Exceptions to the supply of an Access Services

This section is intended to ensure, as far as possible, that the reasons for relying on an exception are transparent and provided in a timely manner. An Access Provider's Access Agreement should be consistent with the provisions of this section 2.3.

2.3.1 Reasons to refuse

An Access Provider may refuse to accept an application for the supply of an Access Service and Interconnection made by an Access Seeker and, accordingly, refuse to supply that Access Service to that Access Seeker for any of the following reasons:

- (a) the Access Seeker's application does not contain the information required by the Access Provider's Access terms and conditions included in any Reference Interconnection Offer (RIO) provided that the information sought is consistent with the terms of this Code and the Access Provider has sought that information from the Access Seeker under the terms included in the Access Provider's RIO or any requirements which is consistent with Paragraph 4.3.8(b);
- (b) the supply of the relevant Access Service and Interconnection to the Access Seeker would have the effect of preventing another Access Seeker who is already being provided with the relevant Access Service from obtaining a sufficient amount of the Access Service to be able to meet the Access Provider's reasonably anticipated requirements, measured at the time when application for supply of the Access Service was made by the Access Seeker.
- (c) the supply of the Access Service and Interconnection to the Access Seeker would have the effect of preventing the Access Provider from obtaining a sufficient amount of the applicable Access Service to be able to meet the Access Provider's reasonably anticipated requirements, measured at the time when application for supply of the applicable Access Service was made by the Access Seeker.
- (d) the supply of the Access Service to the Access Seeker would have the effect of depriving any person or party of a protected contractual right.
- (e) there are reasonable grounds to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions on which the Access Provider complies or on which the Access Provider is reasonably likely to comply with relevant access obligations.

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- (f) there are reasonable grounds to believe that the Access Seeker would fail in connection with an access obligation, to protect:
 - i. the integrity of a telecommunications network or facility; or
 - ii. the safety of the individuals working, or using services supplied by means of, a telecommunications network or facility.
- (g) the Access Provider must use its best endeavours to provide the Access Seeker with alternatives or options to meet its service requirements.

2.3.2 Terms and conditions of refusal

- (a) if an Access Provider refuses to supply an Access Service and Interconnection to an Access Seeker it should provide written reasons to the Access Seeker supporting the Access Provider's refusal.
- (b) if an Access Provider seeks to rely on the reasons in paragraph 2.3.1(b) or (c) for refusing Access, such refusal should, without limitation, contain the following information:
 - i. the time horizon over which reasonably anticipated requirements are measured; and
 - ii. how the Access Provider has identified and assessed the reasonably anticipated requirements of itself and Access Seekers; and
 - iii. the level of commitment or certainty of the reasonably anticipated requirements of itself and relevant Access Seekers.
- (c) if an Access Provider seeks to rely on the reasons in paragraph 2.3.1(d) for refusing Access, such a refusal should, without limitation, contain the following information:
 - i. a description of the relevant protected contractual rights; and
 - ii. the period during which the protected contractual rights are relevant.
- (d) the following information should be provided to the Access Seeker in support of a position that the Access Seeker is not credit worthy.
 - i. specific evidence as to why the Access Seeker would not be able to meet its financial obligations with respect to Access;
 - ii. any independent supporting evidence of that position; and
 - iii. any other relevant information.
- (e) if an Access Provider seeks to rely on reasons that the Access Seeker repeatedly fails to comply with the terms and conditions on which the same or similar Access has been provided, such referral should provide the following information;
 - i. written evidence of any previous failures by the Access Seeker or its owners or directors to comply with terms and conditions of which the Access Provider is aware;
 - ii. a written description of the service to which the previous failure relates; and

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- iii. any other relevant information.
- (f) if an Access Provider who seeks to exercise its rights to refuse providing an Access Service under 2.3.1, it should endeavour to do so in a timely manner.
- (g) the Access Provider must co-operate reasonably with an Access Seeker who wishes to discuss reasons for the refusal by the Access Provider to the supply of an Access Service.

2.3.3 Access Seekers right to express its concerns

- (a) the Access Seeker after considering all the reasons of refusal for providing Access Services by the Access Provider still considers that the reasons put forward for refusal are unreasonable and discriminatory may express its concerns to the Commission. Such referrals to the Commission should only occur after avenues of mutual negotiations between the Access Seeker and Access Provider are deemed to have been exhausted.
- (b) the Commission will be guided by the arbitration procedures prescribed in this Code and other applicable legislation when requested to address such matters.

3 Contents of Access Agreement

3.1 Introduction

3.1.1 It is the intention of the Commission that an Access Agreement pursuant to section 86(4) of the *Telecommunications Act 1996* given to the Commission by the Access Provider should be consistent with this Chapter.

3.1.2 In this Chapter, the Code provides:

- (a) general guidelines in relation to the contents of Access Agreements;
- (b) a summary of the issues applicable to the Access Agreements, which are dealt with elsewhere in this Code

3.2 General Guidelines

3.2.1 Approach and Purpose

Any Access Agreement developed by an Access Provider should:

- (a) assist potential Access Seekers in obtaining information about what Access Obligations are applicable to an Access Provider and, accordingly, the general terms and conditions upon which the Access and Interconnection Services may be supplied;
- (b) contain sufficient detail to reduce the likelihood of confusion as to the Access and Interconnection Services that may be supplied and the general terms and conditions upon which they are supplied;
- (c) be drafted in a manner that enhances comprehension and do not contain unnecessary or unreasonably complex text; and
- (d) contain a glossary of technical and/or defined terms.

3.2.2 Service Specifications

- (a) Access Agreements may be specific to particular types of Access Services or groups of Access Services which are functionally similar. Alternatively, an Access Provider may wish to adopt a single generic Access Agreement which applies to all Access Services supplied by the Access Provider. Where an Access Agreement relates to one or more Access Services, the Access Agreement should either in its body or in schedules, deal separately with all of the issues dealt with in this Chapter to the extent that it is reasonably necessary given the technical, operational or functional differences between the Access Services.
- (b) An Access Agreement should contain a clear description of:
 - i. the terms and conditions relating to the Access Obligations and corresponding Access and Interconnection Service(s) to which those terms and conditions relate; and
 - ii. the Date of Effect and Expiry Date of the Access Agreement (or a method of determining the Date of Effect and Expiry Date).

3.2.3 Reference Interconnection Offer or Information Requirements

An Access Agreement should contain provisions consistent with Chapter 4 in relation to:

- (a) the provisions and contents of a Reference Interconnection Offer or Information Package by an Access Provider to Nominated Access Seekers as defined in Clause 2.1;
- (b) the type of information which should accompany applications for the supply of an Access and Interconnection Service (including but not limited to creditworthiness evidence, forecasts, security and related matters);
- (c) notices relating to the revocation, withdrawal and variation of Access Agreements; and
- (d) negotiation procedures in respects of bilateral agreements.

3.2.4 Circumstances in which services will not be provided

- (a) An Access Agreement should set out the circumstances in which the Access Provider will decline a request to supply an Access Service(s) and the terms on which the Access Provider should determine the request and the reasons for its decision. These circumstances should be limited to, and the other terms should be consistent with, those matters set out in clause 2.3.
- (b) such circumstances should be mutually agreeable to the Access Seeker and Access Provider.

3.2.5 Terms and conditions

An Access Agreement may include or attach standard terms and conditions for the supply of an Access and Interconnection Service(s)

3.2.6 Bilateral negotiations and agreements

- (a) an Access Provider and Access Seeker should facilitate the supply of Access Service in a manner that is conducive to and promotes good commercial relationships and encourages efficiency; and
- (b) Access Providers and Access Seekers may use this Code, the contents of any attachments to this Code as a basis for the negotiation of a bilateral agreement which caters for the specific needs of the parties in the circumstances

3.2.7 Others as mutually agreed

An Access Agreement may include other issues besides those mentioned above as mutually agreed between an Access Provider and Access Seeker.

3.3 Terms and Conditions - Summary

This section provides an outline of all matters that should be included in an Access Agreement as set out in chapters 2, 4 and 5.

3.3.1 Governing Principle

All Access Agreements should specify or adopt as a governing principle, the principles of non-discrimination set out in clauses 2.2.3 and 2.2.4.

3.3.2 Dispute Resolution

- i. An Access Agreement should contain provisions for dispute resolution mechanisms between the Access Provider and Access Seeker such as but not limited to inter-party working groups and third party mediation or arbitration by the Commission on the terms and conditions upon which an Access Service may be supplied, between the Access Provider and the Access Seeker; and
- ii. Where parties apply to the Commission for arbitration, the dispute resolution procedures set out in clause 5.3 will apply.

3.3.3 Suspension and Termination

An Access Agreement should contain reasonably fair and transparent provisions about the circumstances in which an Access Provider or an Access Seeker may suspend or terminate the supply of an Access Service under an Access Agreement.

3.3.4 Confidentiality

An Access Agreement should contain provisions that require reasonable protection of Confidential Information between the Access Provider and Access Seeker. Any disclosure of Confidential Information outside the provisions of the Access Agreement should seek the prior written approval of the party to which the information relates to.

3.3.5 Price-Related Terms and Conditions

An Access Agreement should contain provisions consistent with the principles and requirements contained in clause 2.2 and Chapter 5.

3.3.6 Technical Specifications

An Access Agreement should be compliant with the requirements of the Technical Interconnection Code of Practice developed by PANGTEL.

3.3.7 Billing and Settlement

An Access Agreement should contain provisions on procedures of how to deal with issuing bills and settling bills.

3.3.8 Billing Information

An Access Agreement should also include provisions on how billing information will be provided under this Code.

3.3.9 Ordering and Provisioning Procedures

An Access Agreement should contain provisions relating to ordering and provisioning of Access Services and Interconnection in respect of the timelines of such ordering and provisioning processes.

3.3.10 Operations and Maintenance Procedures

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An Access Agreement should contain or incorporate provisions in relation to operations and maintenance procedures applicable to Access Services and Interconnection.

3.3.11 Customer Access Procedures

An Access Agreement should contain or incorporate provisions in relation to procedures of reasonable Access to Customers applicable to Access Services and Interconnection.

3.3.12 Copy to be provided to Commission and PANGTEL

A copy of an Access Agreement that has been mutually agreed to and signed by the Access Provider and Access Seeker should be made available to the Commission and PANGTEL.

4 Administrative Procedures Applicable to Access Agreement

4.2 Introduction

4.1.1 General

The Chapter deals with the administrative procedures which should be incorporated in an Access Agreement pursuant to section 86(4) of the *Telecommunications Act* 1996 to facilitate the provision of Access Services and Interconnection.

4.1.2 Contents of this Chapter

This Chapter includes provisions applicable to:

- the provisions and contents of an Information Package by an Access Provider to potential Access Seekers;
- the type of information which should accompany applications for the supply of an Access Service and Interconnection;
- notices relating to the revocation, withdrawal and variation of Access Agreement; and
- negotiation procedures in relation to bilateral agreements.

4.2 Reference Interconnection Offer

4.2.1 This section relates to the provision of information by an Access Provider to potential and existing Access Seekers. The provisions set out in this section, or provisions to a similar effect, in relation to the provision and content of a Reference Interconnection Offer ("RIO") should be provided in an Access Provider's Access Agreement.

4.2.2 An Access Provider should establish and maintain an updated RIO package in relation to each Access Service applicable to it. The aim of a RIO package is to facilitate negotiations in relation to the supply of an Access Service or Interconnection, to be conducted in a timely manner between the Access Provider and Access Seeker.

4.2.3 The RIO package should be provided to all potential Access Seeker(s) of the applicable Access Service and Interconnection that may be available from the Access Provider. An Access Provider must not refuse to provide an existing or potential Access Seeker a RIO if requested.

4.2.4 If the RIO package is amended by an Access Provider, it should provide a copy of the amendments or an amended copy of the RIO to Access Seekers who are being provided with the Access Service to which the Reference Interconnection Offer relates.

4.2.5 An Access Provider should not charge a prohibitive fee for the provision of the Reference Interconnection Offer Package and should provide the RIO Package within 15 business days from the date of receipt of a written application from the Access Seeker(s).

4.2.6 The RIO Package should be consistent with the Access Provider's Access Agreement and contain at least the following information;

- (a) the corporate name and contact details of the Access Provider;
- (b) a detailed service description of the applicable Access Service and Interconnection;
- (c) the Access Agreement applicable to that Access Service;
- (d) the proposed charges for the relevant Access Service and Interconnection as determined in accordance with the pricing principles prescribed in clause 5.2 of this Code.
- (e) to the extent relevant, how interconnection to facilities owned or controlled by the Access Provider is to occur and the physical arrangements for locating equipment and arrangements for accessing that equipment, including but not limited to the geographic location and functional level at which an Access Seeker may connect its Network to the Access Provider's Network;
- (f) if requested by the Access Seeker, a summary of the technical specifications relevant to the applicable Access Service and Interconnection of Networks to enable supply of the Access Service must be provided by the Access Provider. These specifications must be consistent with the Technical Interconnection Code of Practice developed by PANGTEL;
- (g) the applicable;
 - (i) ordering and provisioning procedures of the Access Provider; and
 - (ii) operations and maintenance procedure of the Access Provider.
- (h) to the extent necessary, appropriate limitations and restrictions which may apply to the supply of the Access Service;
- (i) indication of the time and major milestones likely to be required to enable the Access Service to be supplied to the Access Seeker;
- (j) any security requirements which the Access Provider requires from the Access Seeker;
- (k) details of any Confidentiality Agreements which the Access Provider requires from the Access Seeker(s);

4.2.7 An Access Provider should use its reasonable endeavours to co-operate with a potential Access Seeker's reasonable requests from time to time for additional information in relation to the supply of the Access Service and Interconnection of Networks.

4.3 Access Application

4.3.1 Introduction

- (a) an Access Agreement may set out requirements for an application to be completed by an Access Seeker for the supply of an Access Service and Interconnection;
- (b) the purpose of such an application should be to provide an Access Provider with sufficient information to enable it to assess a request for the supply of an Access Service by an Access Seeker. However, as a statement of general principle, an Access Provider should not impose unreasonably or overly burdensome application information requirements on Access Seekers.

- (c) Access Providers and Access Seekers also acknowledge that the exchange of information during the application phase may be an iterative process whereby each party assesses the requirements and capabilities of each other over a period. An Access Provider should recognize the iterative nature of information exchange and should facilitate this process rather than hinder it.

4.3.2 Applications to be in writing

An Access Seeker who seeks to make an application for the supply of an Access Service or Interconnection must apply in writing to the Access Provider, in a format required by the Access Provider.

4.3.3 Form of Application

The information which could be contained or attached to an Access Seeker's Access Application includes;

- (a) the registered corporate name and contact details of the Access Seeker;
- (b) evidence that the Access Seeker is the holder of a Carrier Licence or an appropriate licence issued by the Commission under the *Telecommunications Act*;
- (c) name of the type of Access Service(s) and Interconnection required;
- (d) confirmation that the Access Seeker is not currently supplied with that service by the Access Provider or if so, the reasons for the additional request;
 - ii. geographical location and functional level of Point of Interconnect required by the Access Seeker;
 - iii. any likely network conditioning within the Access Provider's network and the requested timeframe within which this is requested to be completed;
 - iv. Creditworthiness Information pursuant to paragraph 4.3.4;
 - v. Reasonable Forecast Information, as described in paragraph 4.3.5;
 - vi. Authorization that enables the Access Provider to undertake reasonable enquiries in to the creditworthiness of the Access Seeker to determine appropriate Security Requirements;
 - vii. Confirmation that if the Access Seeker's application is accepted and the Access Seeker is supplied with the Access Service, the Access Seeker will comply with the terms and conditions applicable to the supply of the Access Service.
 - viii. Any other information that are required to be provided under the terms of the Technical Interconnection Code of Practice; and
 - ix. Any other reasonable information the Access Provider considers relevant to be included in an application.

4.3.4 Creditworthiness Information

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Creditworthiness Information may be required to accompany an application for the supply of an Access Service provided appropriate confidentiality assurances are given by the Access Provider in respect of the non-disclosure and use of such information.

4.3.5 Forecast Information

The Forecast Information sought by an Access Provider from an Access Seeker should be consistent with the forecasting procedures set out in the terms and conditions of the Access Provider's RIO or Access Agreement.

4.3.6 Security Requirements

- (a) At the same time as or following receipt of an application from an Access Seeker, an Access Provider may require the Access Seeker to provide security.
- (b) As a statement of general principle, the amount of any security required by an Access Provider from an Access Seeker should be proportionate to the value of the quantum of Access Service likely to be provided under the Access Agreement.
- (c) The Security Requirements of an Access Provider should be specified in an Access Agreement and should be consistent with the general principle in paragraph (b).

4.3.7 Examples of security may include but not limited to:

- (a) fixed and floating charges
- (b) personal guarantees from directors
- (c) bank guarantees
- (d) letters of comfort
- (e) mortgages
- (f) right of set off

4.3.8 Assessment of Applications

A Reference Interconnection Offer or Access Agreement should provide that the Access Provider will use reasonable endeavours following the receipt of an application for the supply of an Access Service or Interconnection from an Access Seeker:

- (a) to inform the Access Seeker, in writing, as soon as practicable after the receipt or not later than 10 business days after the date of receipt of an application that it has received the Access Seeker's application for the supply of an Access Service or Interconnection;
- (b) if required, to request additional information from the Access Seeker as soon as practicable after receipt or not later than 15 business days after the date of receipt of an application for the supply of an Access Service or Interconnection;
- (c) to consider the application and provide a response within a reasonable timeframe. This may involve an iterative process of meetings and negotiations between the Access Provider and Access Seeker to reach a consensus on all or certain aspects of the Access Agreement.

4.4 Notice of Revocation, Replacement and Variation of an Access Agreement

4.4.1 Introduction

This section provides for a method of withdrawal and/or replacement of an Access Agreement by an Access Provider from time to time.

4.4.2 Notice procedures of withdrawal/replacement

- (a) an Access Provider should include in its Access Agreement an obligation imposed upon itself that prior to the withdrawal by the Access Provider of an Access Agreement if it is no longer providing or is proposing to no longer provide that Access Service to itself, it will provide a notice of withdrawal to all Access Seekers to whom it is supplying those Access Service under that Access Agreement where such period is no less than six (6) months.
- (b) an Access Provider should include in its Access Agreement a statement that following the withdrawal or expiry of the Access Agreement other than in the circumstances referred to in 4.4.2(a) above, the terms and conditions of that Access Agreement will continue as bilateral agreement between the Access Provider and the Access Seeker until such time as the Access provider and the Access Seeker agree to an alternative arrangement. All reasonable endeavours shall be used to agree to such alternative arrangements within six months after the withdrawal or expiry of the Access Agreement.
- (c) Any notice given to the Commission in respect of the revocation of an Access Agreement should be consistent with the notice period specified in the Access Provider's Access Agreement.

4.4.3 Notification of variations to or replacements of Access Agreements

An Access Provider should include in its Access Agreement an obligation imposed upon itself that prior to:

- (a) lodging a variation to that Access Agreement; or
- (b) replacing that Access Agreement,

the Access Provider must consult for no less than 20 business days with the Access Seeker(s) who are being supplied with an Access Service under that Access Agreement or pursuant to an agreement which contains an acknowledgement that the agreement is based on that Access Agreement, and with all applicants whose application has been accepted at that time by the Access Provider in respect of that Access Service, in relation to such variation or replacement of the Access Agreement.

4.4.4 If the Commission accepts a variation to or replacement of an Access Agreement, the Access Provider must give a written notice to those Access Seeker(s) and applicants referred to in paragraph 4.4.3, to the effect that;

- (a) the Commission has accepted the variation or replacement;
- (b) when the variation or replacement will come into effect; and
- (c) how the variation or replacement affects the operation of the Access Agreement and the Access Seeker or applicant.

5 Economic Aspects of Access

5.1 Introduction

5.1.1 This chapter deals with:

- (a) the broad principles of pricing access and interconnection;
- (b) the relevance of the Commission's Pricing Principle; and
- (c) the application of the Commission's Arbitration Determinations.

5.2 Commission Pricing Principle

5.2.1 Where the Access Provider and the Access Seeker fail to reach agreement on a commercial basis as to the charges payable for access and interconnection, and the Commission is required to determine the matter pursuant to section 84 of the Telecommunications Act, in determining the charges for access and interconnection the Commission shall have regard to the following factors:

- (a) the directly and indirectly attributable incremental capital costs incurred by the Access Provider in connection with the provision of the access and interconnection services to the Access Seeker(s), being a reasonable return on the written down asset base, and including economic depreciation costs associated with the asset base, for those assets used directly or indirectly to provide the access and interconnection;
- (b) the directly and indirectly attributable incremental operating costs incurred by the Access Provider in connection with the provision of the access and interconnection;
- (c) full recovery of once off incremental operational and capital costs incurred in the provision of the access and interconnection which the Access Provider would not have otherwise incurred but for the requirement to provide the access and interconnection;
- (d) the requirement for a fair and reasonable contribution to the common costs incurred by the Access Provider;
- (e) the availability and capacity of the telecommunications network operated by the Access Provider to provide the access and interconnection and the timeframe reasonably required to provide access to additional capacity; and
- (f) any other factors the Commission considers relevant.

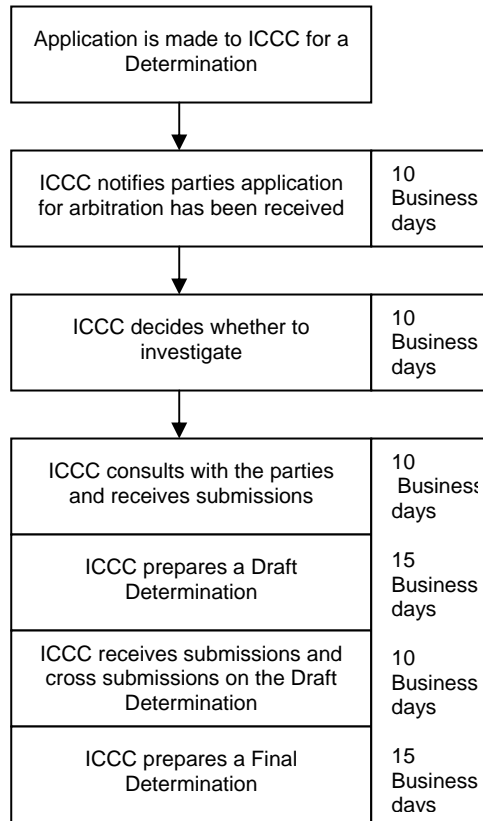
5.2.2 The Commission's determination of the charges for access and interconnection besides making available to the Access Provider and the Access Seeker must be made available to the public but must not disclose confidential data provided to the Commission by the Access Provider for the purposes of determination.

5.2.3 If these pricing principles are amended from time to time, this Code will be promptly reviewed to reflect these changes and so as to inform all Access Seekers and Access Providers accordingly.

5.3 Commission Arbitration Procedures

- 5.3.1 Where the Access Seeker and an Access Provider cannot reach an agreement on the terms and conditions of providing access and interconnection, the parties may request the Commission to arbitrate pursuant to section 84(1) of the Telecommunications Act 1996.
- 5.3.2 The Commission may make Arbitration Determinations which, subject to sections 84 and 85 of the Telecommunications Act 1996 are binding on the parties to that arbitration.
- 5.3.3 The Commission acknowledges that an Arbitration Determination made may also have precedent value and should be applied by Access Providers and Access Seekers in substantially similar circumstances applicable to that Arbitration Determination.
- 5.3.4 The Commission expects that any application by disputing Access Seekers for arbitration will have exhausted all avenues of mutual commercial negotiation between parties as described in this Code. Such application for arbitration should be supported by documentary evidence that negotiations have actually taken place and highlight the points of contention and disagreements.
- 5.3.5 The Commission will employ the following arbitration procedures if asked by a disputing party seeking an Access Service(s) or Interconnection;
- (a) Parties will be required to provide initial statements to establish the current status of the negotiations and the points of difference between the parties;
 - (b) Submissions (and the opportunity for cross submissions from each party) setting out the arguments from each party as to what they believe the correct outcome of the arbitration to be. In analysing information received from the parties, the Commission will be guided by the requirements of this Code, the Technical Interconnection Code of Practice and the *Telecommunications Act*. The Commission may also resort to using acceptable international benchmarks for analysing pricing disputes.
 - (c) The Commission will release a draft determination setting out its preliminary views and reasoning on what the appropriate determination should be, providing further opportunity for submissions on the draft determination;
 - (d) A final determination, including the ability to impose retrospective measures will be imposed on the parties after considering all submissions. The final determination may require a review at some future date not less than six (6) months should more accurate and updated cost information becomes available
 - (e) The Commission will impose an interim solution based on information available at hand.
- 5.3.6 The Commission's arbitration procedure including the timeframe required for each activity to be completed is highlighted in the table below;

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5.3.7 If, when an arbitration is sought, the Commission has already made a determination of the matter following an arbitration in accordance with clause 2.1.4 of this Code, all of the processes under this clause 5.3 will be deemed to have occurred, such that the Commission may, in its absolute discretion, issue its final determination at any time after receiving the application for arbitration.

6 Glossary and Interpretation

6.1 Glossary

This glossary shall apply to the main body of this Code.

Access Agreement	Means an agreement made between two or more licensees entered into pursuant to Part XI of the <i>Telecommunications Act</i>
Access Application	Means an application by a licensed carrier or a Nominated Access Seeker to use another licensed carrier's telecommunications facility for carriage services
Access Obligations	Means the obligations of the Access Provider and/or the Access Seeker specified under an Access Agreement, any other regulatory instruments or the <i>Telecommunications Act</i>
Access Provider	Means a licensed carrier who provides access of its telecommunications facility for usage by an Access Seeker
Access Seeker	Means a licensed carrier who applies for or intend to gain access of another licensed carrier's telecommunications facility for usage or carriage services and includes, where appropriate, a Nominated Access Seeker within the meaning of clause 2.1 of this Code
Access Service	Means a service pursuant to Part XI of the <i>Telecommunications Act</i>
Arbitration Determinations	Means a determination by the Commission pursuant to section 84 of the <i>Telecommunications Act</i>
Bill Information	See paragraph 2.2.5 of this Code
Business Day	A day other than a Saturday, Sunday or a day which is lawfully observed as a national public holiday on the same day around Papua New Guinea
Carriage Service	Means a service of carrying communications by means of guided and/or unguided electromagnetic energy.
Carrier Licence	Means a licence issued pursuant to Part VI of the <i>Telecommunications Act</i>
Carriers	Means the holder a of a telecommunications licence in force under Part VI of the <i>Telecommunications Act</i> .
Code	Means this Interconnection Code of Practice
Commission	Means the Independent Consumer and Competition Commission
Confidential Information	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 Access Seeker or Access Provider (as the case may be)
Confidentiality Agreements	The confidentiality agreement required by the Access Provider in its Information Package.
Content Service	Means <ul style="list-style-type: none"> (a) a broadcasting service; or (b) an on-line information service (eg. Dial-up information service); or (c) an on-line entertainment service (eg. A video on demand service)

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	<p style="text-align: center;">or</p> <p>(d) any other on-line service (eg. Education, weather service provided by government).</p>
Credit Worthiness Information	See paragraph 4.3.4 of this Code
Date of Effect	Means the date from which an Access Agreement takes effect.
End-user	Means the individual or organisation that originates or is the final recipient of telecommunications messages or information (i.e. the consumer)
Expiry Date	Means the date on which an Access Agreement cease to take effect.
Forecast Information	See paragraph 4.3.5 of this Code
Information Package	See paragraph 4.2 of this Code
Interconnection	Means the physical and functional connecting of different communications networks and communications services to ensure that users can access communications networks and services of other telecommunications operators.
PANGTEL	Means the Papua New Guinea Radiocommunications and Telecommunications Technical Authority
Pricing Principles	Means principles developed by the Commission from time to time pursuant to section 86 of the <i>Telecommunications Act</i>
Reasonable Terms & Conditions	See paragraph 2.2.1 of this Code
Security Requirements	See paragraph 4.3.6 of this Code
Reference Interconnection Offer	See paragraph 4.2 of this Code
Technical Int. Code of Practice	Means the Technical Interconnection Code of Practice developed by PANGTEL
Telecommunications Facility	<p>(a) in the case of a reference to a facility ancillary to a line link – has the meaning given by s.13 of the <i>Telecommunications Act</i></p> <p>(b) otherwise – means –</p> <ul style="list-style-type: none"> i. any part of the infrastructure of a telecommunications network; or ii. Any line, equipment, tower, mast, antenna, tunnel, hole, pit, pole or other structure or thing used, or intended for use, or in connection with a telecommunications network; or iii. Without limiting sub-paragraph (i) and (ii), a facility ancillary to a line link (as defined by s.14 of the <i>Telecommunications Act</i>)
Telecommunications Network	<p>Means –</p> <ul style="list-style-type: none"> a. a network to supply telecommunications services between places within Papua New Guinea; and b. a network to supply telecommunications services between places within Papua New Guinea and places outside Papua New Guinea.
Business Day	Means a business day other than a weekend or a declared public holiday in Papua New Guinea

6.2 Interpretation

6.2.1 General

In this Code, unless the context otherwise requires;

- (a) headings are for convenience only and do not affect the interpretation of the Code;
- (b) words importing the singular include the plural and visa versa;
- (c) words importing a gender includes any gender;
- (d) an expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or any other body corporate, any other government agency;
- (e) a reference to anything includes a part of that thing;
- (f) a reference to a clause, chapter, condition, schedule or parties to a chapter, condition, clause, schedule or part of the Code;
- (g) a reference to any statute, regulation, proclamation, order in council, includes all statutes, regulations, proclamations, orders in council, by-laws and determinations issued under that statute;
- (h) a reference to a person includes that person's executives, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assignees;
- (i) period of time;
 - i. which dates from a give day or the day of an act or event is be calculated exclusive of that day; or
 - ii. which commences on a given day or the day of an act or event is to be calculated inclusive of that day; and
 - iii. a payment which is required under the Code to occur on or by a stipulated day which is not a Business Day may occur on the next Business Day.