



BERMUDA

REGULATORY AUTHORITY (INTERCONNECTION AND  
INTEROPERABILITY) EMERGENCY GENERAL DETERMINATION 2021

BR 154 / 2021

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The Regulatory Authority, in exercise of the power conferred by sections 62 and 66 of the Regulatory Authority Act 2011 and sections 9(2)(c)(x), 24(2) and 33(3) of the Electronic Communications Act 2011, makes the following Emergency General Determination:

Citation

1 This Emergency General Determination may be cited as the Regulatory Authority (Interconnection and Interoperability) Emergency General Determination 2021.

Interpretation

2 In this Emergency General Determination, unless the context indicates otherwise, terms shall have the meaning given in the Regulatory Authority Act 2011, and the Electronic Communications Act 2011.

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Purpose

3 This Emergency General Determination, which the Authority determines to be in the public interest and consistent with the purposes of the Electronic Communications Act 2011, creates obligations for interconnection and interoperability that apply to COL holders that operate public electronic communications networks.

Obligations of operators of public electronic communications networks

4 (1) Subject to subparagraphs (2) and (3), a COL holder that operates a public electronic communications network must—

- (a) establish, upon reasonable terms and conditions, interconnection and interoperability, at any technically feasible point within its network, with other COL holders; and such interconnection and interoperability shall be at least equal in quality to that provided to itself, a subsidiary, affiliate or any other COL holder, to which it provides interconnection and interoperability;
- (b) provide, on reasonable terms and conditions, for physical collocation of interconnection and interoperability at its premises;
- (c) establish and provide facilities for operating, through routes, on reasonable terms and conditions;
- (d) provide to other COL holders, upon reasonable terms and conditions, access to support structures including telephone poles, underground conduits, and communication towers; and
- (e) maintain existing services unless permitted by the Authority to discontinue such services.

(2) A COL holder shall comply with the obligations set out under subparagraph (1) within thirty days of the effective date of this Emergency General Determination, and is not relieved of those obligations by reason only of the COL holder's inability to comply within the time specified.

(3) Notwithstanding subparagraph (2), a COL holder may comply with the obligations under subparagraph (1) within such longer period as the Authority may allow.

Supplementary matters: General

5 (1) A COL holder must—

- (a) maintain the confidentiality of any information provided by a customer or another COL holder;
- (b) refrain from any act or practice which is intended, or is likely, to have the effect of lessening competition; and
- (c) refrain from marketing practices or advertisements which are false or misleading in a material respect.

(2) The obligation set out under subparagraph (1)(a) does not apply—

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- (a) where one COL holder wishes to transfer certain classes of services to another COL holder;
  - (b) in respect of public electronic communication services which are directly connected with the delivery of emergency services; or
  - (c) where in the special circumstances of a particular case the Authority determines that it is in the public interest that such confidentiality should not apply.
- (3) Where a COL holder has established to the satisfaction of the Authority that an obligation under paragraph 4(1)(a), (b) or (c) applies to an existing service that is unprofitable or loss-making, the Authority shall not refuse permission to discontinue that service unless—
- (a) the Authority considers that it is in the public interest to refuse permission, having regard to the utility of the service, the availability of suitable substitutes, and the degree of reliance on the service by the public or segments of the public; and
  - (b) the Authority is satisfied that the COL holder will be adequately compensated for the loss involved in continuing the service by the rates and charges it charges for other services it provides.
- (4) No COL holder may disconnect another COL holder without the consent in writing of that COL holder or the Authority.
- (5) A COL holder may only seek the permission of the Authority to disconnect another COL holder if—
- (a) that COL holder fails to settle its accounts due—
    - (i) within a period of thirty days after receipt of a written warning notice; or
    - (ii) within a further period of thirty days after receipt of a written notice of intention to seek permission for disconnection;
  - (b) that COL holder fails to comply with any term of the contract or agreement for the provision of the service;
  - (c) that COL holder fails to conform to the agreed technical specification for the provision and operation of the service; or
  - (d) there are other just and reasonable cause for disconnection.
- (6) A COL holder which seeks the Authority's permission to disconnect another COL holder shall give notice to the Authority in writing not less than thirty days before the date of the proposed disconnection, informing the Authority of the reasons for the proposed disconnection; and the Authority shall forthwith refer the matter to the Board of Commissioners for enquiry and report.
- (7) Upon referral of a matter to the Authority under subparagraph (5), the Authority shall conclude its enquiry as expeditiously as possible and render a decision on

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a proposed disconnection of one COL holder by another within thirty days of receipt by the Authority of the notice by the COL holder under subparagraph (6).

Supplementary matters: Agreements

6 (1) A COL holder must submit to the Authority either prior to execution, or not later than ten days after, and in such form as the Authority may specify, copies of all agreements in respect of interconnection, interoperability, and access to support structures between that COL holder and another COL holder, including any amendments to any existing agreements between COL holders.

(2) For the purpose of subparagraph (1), any COL holder that is party to an agreement may furnish a copy of the agreement to the Authority on behalf of all the COL holders that are party to the agreement.

(3) Upon receipt of a copy of an agreement under subparagraph (1) the Authority shall within ten days either indicate its approval of such agreement or its intention to enquire into the agreement.

(4) Where the Authority approves an agreement and informs the COL holder in writing of such approval, the agreement shall either be executed within seven business days by all parties or remain in force as the case may be.

(5) If the Authority decides to enquire into any aspect of an agreement, the Authority shall conclude its enquiries as expeditiously as possible, and in no case in more than thirty days or such longer period as the Authority may require, and the Authority shall give a direction—

- (a) approving the agreement;
- (b) approving the agreement on a provisional basis;
- (c) changing the agreement in whole or in part; or
- (d) suspending the agreement or postponing the date upon which the agreement is intended to be executed, to such other date as may be specified, and the COL holders shall comply therewith.

Dispute Resolution

7 A person who is aggrieved by the failure of a COL holder to discharge an obligation under this Emergency General Determination may make a complaint to the Authority in accordance with section 58 of the Regulatory Authority Act 2011.

Effective date and expiration

8 This Emergency General Determination comes into effect on the day it is published in the Gazette, and expires six months from the day it takes effect.

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Signed this 15th day of November 2021

Chairman  
Regulatory Authority

[Operative Date: 16 November 2021]