

TELECOMMUNICATIONS ORDINANCE 2004

TELECOMMUNICATIONS PRICING REGULATIONS 2005

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TELECOMMUNICATIONS ORDINANCE 2004
TELECOMMUNICATIONS PRICING REGULATIONS 2005

(Legal Notice 35 of 2005)

MADE by the Governor under section 64 of the Telecommunications Ordinance 2004

Citation and commencement

1. These Regulations may be cited as the Telecommunications Pricing Regulations and shall come into operation on 1st January, 2006.

Interpretation

2. In these Regulations unless the context otherwise requires --

“Designated Licensee” means any service provider designated by the Commission as being dominant with respect to a telecommunications service in accordance with section 16 of the Ordinance;

“Ordinance” means the Telecommunications Ordinance 2004;

“Price Cap Regime” means the regime for price cap regulation prescribed by these Regulations;

“Price Cap Regime Period” means a period of three to five Price Cap Years during which the Price Cap Regime is in force for any Designated Licensee;

“Price Cap Services” means telecommunications services subject to the Price Cap Regime;

“Price Cap Year” means the initial year and each subsequent year in which the Price Cap Regime shall be in force for any Designated Licensee;

“Price Control Basket” means a basket (grouping) of Price Cap Services as determined by the Commission pursuant to section 4; and

“Price Control Formula” means the formula provided for in section 7.

(1) Unless otherwise specified, terms used in these Regulations shall have the meanings assigned to them under the Ordinance.

Application of Regulations

3. These Regulations are promulgated pursuant to, and constitute the incentive-based rate setting mechanism referred to in, section 27(4) of the Ordinance.

(1) These Regulations shall apply to a Designated Licensee in relation to its provision of any Price Cap Service, where and for so long as the Commission determines, under section 16 of the Ordinance, that such Designated Licensee is dominant in relation to the provision of such Price Cap Service.

(2) The Commission may, at any time, issue a determination terminating the application of these Regulations in relation to any Price Cap Service if the Commission determines that the Designated Licensee is no longer dominant pursuant to section 16(3) of the Ordinance.

(3) Compliance with these Regulations is required without prejudice to all other obligations imposed on the Designated Licensee under the Ordinance or under any licence issued by the Commission.

Pricing constraint

4. Each Designated Licensee shall ensure, at all times, that charges for the Price Cap Services that it provides conform to these Regulations, and that such charges shall be set, and may be changed, and charged to users only as provided in these Regulations.

Price Control Baskets

5. (1) The Commission shall determine, for each Designated Licensee, which telecommunications services shall be Price Cap Services and included in one or more Price Control Baskets for purposes of applying the Price Control Formula.

(2) The Commission shall publish in the Gazette for public comment its initial determination of a Designated Licensee's Price Control Baskets.

(3) The Commission shall determine, in establishing and subsequently reviewing the Price Control Baskets, the weightings to be given to each service component for purposes of calculating the average price levels of the Price Control Basket for a given Price Cap Regime Period.

(4) The Commission shall review the Price Cap Services included in each Price Control Basket at the end of each Price Cap Regime Period.

(a) Such review shall include a public consultation in such manner as the Commission may determine.

(b) If, after such consultation, the Commission determines, pursuant to section 16(3) of the Ordinance, that the Designated Licensee is no longer dominant in relation to one or more Price Cap Services

included within a Price Control Basket, then such service shall no longer be a Price Cap Service and shall be thereafter excluded from the relevant Price Control Basket.

(5) When a Designated Licensee introduces a new telecommunications service, the Commission shall review the nature, terms and market position of such service to determine whether it shall be included within a Price Control Basket, and to determine the weighting to apply to revenues from such service in the calculation of the Price Cap Formula for the next Price Cap Year.

(6) A Designated Licensee may offer packages of bundled Price Cap Services, subject to the terms of its licence, although it must offer each such Price Cap Service individually.

Changes to prices of Price Cap Services

6. (1) Designated Licensees subject to the Price Cap Regime may freely adjust the prices for Price Cap Services, subject to these Regulations.

(2) Before implementing any changes in prices of Price Cap Services, a Designated Licensee shall provide notice of at least twenty-eight (28) days for price increases, and seven (7) working days for price decreases to users and to the Commission, of such proposed change.

(3) The Commission may review any proposed price changes notified to it and, if it determines there is reasonable cause, may notify the Designated Licensee in writing that it is suspending the effectiveness of such changes pending a formal investigation of whether they are consistent with the Price Cap Regime.

(4) With respect to price decreases, within the seven (7) working day-period specified in subsection (2), the Commission may notify the Designated Licensee that the rate is conditionally approved, after which the Designated Licensee may immediately implement the decrease, subject to a determination by the Commission, by no later than 180 days after the effective date of such decrease, that such rate is anti-competitive or will have such effect.

(5) If the Commission does not order a suspension of notified price changes within the twenty-eight (28) day or (7) working day notice period, then the new rates shall take effect.

(6) Notwithstanding subsection (5), the Commission may at any time review any prior rate changes according to the provisions of these Regulations.

(7) Each Designated Licensee shall take all reasonable steps to ensure that, during any Price Cap Year, any changes in the prices of Price Cap Services comply with the requirements of the Price Cap Regime, specifically, that the weighted average overall prices for each designated Price Control Basket shall not exceed the price level for the

Price Control Basket for the given Price Cap Year, as calculated in accordance with section 7,

- (a) Within three (3) months after the end of each Price Cap Year, the Designated Licensee shall file with the Commission evidence demonstrating compliance with the Price Cap Regime for such Price Cap Year.
- (b) If the Commission determines, based on prior problems, or reasonably anticipated problems (based on the Designated Licensee's pricing of the Price Cap Services), with the Designated Licensee's demonstrating compliance, the Commission may, as appropriate, require that the Designated Licensee demonstrate compliance more frequently than as provided in clause (a).

(8) If, upon review of price changes implemented by a Designated Licensee during a given Price Cap Year, the Commission determines that such changes have caused the price level for a Price Control Basket to exceed the limitations determined by the Price Control Formula, the Commission may --

- (a) order the immediate reduction of prices for one or more Price Cap Services within the Price Control Basket, together with retroactive refunds to customers of such Price Cap Services;
- (b) allow the price changes to remain in place, but impose further limitations or a moratorium on future price changes until such time as the Commission determines that customers of the Services in question have been properly compensated for the prior excess prices; and/or
- (c) impose such other sanctions, penalties, and remedies upon the Designated Licensee as it deems appropriate to respond to the violation of these Regulations, consistent with the provisions of the Ordinance.

(9) Notwithstanding the price level changes permitted under the Price Control Formula, the Commission may establish further limitations on changes to prices of Price Cap Services during any given Price Cap Year.

- (a) Such limitations may take the form of either (i) restrictions on the maximum overall percentage by which any prices for any Price Cap Service or Price Control Basket may increase within a given Price Cap Year, and/or (ii) restrictions on the number and frequency of separate price increases to be allowed.
- (b) The Commission shall establish any such limitations in establishing and subsequently reviewing the Price Cap Regime at the beginning of each Price Cap Regime Period.

(10) The Commission shall also establish a mechanism, as part of the initial establishment of the Price Cap Regime, to allow for Designated Licensees to carry over from one Price Cap Year to the next changes that were permitted (but not made) in the prices of any Price Cap Services.

Price Control Formula for Price Cap Services

7. (1) The Commission shall establish, following public consultation, the Price Control Formula to apply to Price Control Baskets provided by Designated Licensees.

- (a) The Price Control Formula shall calculate the maximum weighted average prices allowed for Price Cap Services within each Price Control Basket during a given Price Cap Year.
- (b) Weightings for services within each Price Control Basket shall be based upon relative revenues.
- (c) The Price Control Formula shall be based upon the formula set out below and in accordance with this section 7:

$$[P(t) = P(o)[RPI - X + / - Z]$$

where:

P(t) is the current price level at the beginning of Price Cap Year t; P(o) is the price level at the beginning of the previous Price Cap Year; RPI is the relative percentage change in the United States Consumer Price Index; X is a Commission-determined productivity or efficiency factor; and Z is a factor to represent exogenous cost changes (i.e., changes in costs to the firm—up or down—that are not captured by changes in conventional inputs (labor, capital, and raw materials) and that are beyond the firm's control).

(2) The “X” factor in the Price Control Formula shall be determined by the Commission following public consultation, and shall be based upon a formula that evaluates the expected and appropriate level of productivity improvement by a Designated Licensee over time. This formula may take into account the following factors:

- (a) Existing and projected: revenues, financial and operating expenses, depreciation charges and capital employed;
- (b) Projected volume growth for Price Cap Services within the Price Control Basket(s) or sub-basket(s);
- (c) Cost/volume and asset/volume relationships;
- (d) Projected unit input cost changes;

- (e) Projected tax liabilities;
- (f) Weighted average cost of capital (WACC) in the Turks & Caicos Islands; and/or
- (g) Such other economic and business considerations as the Commission determines may appropriately reflect the real productivity gains to be expected from the regulated firm.

(3) For purposes of implementing these Regulations, the Commission shall determine all components of the Price Cap Regime that shall apply to each Designated Licensee through an initial public consultation and proceeding.

- (a) Within one hundred and eighty (180) days of the adoption of these Regulations, the Commission shall commence such proceeding to establish the initial Price Cap Regime for any Designated Licensee determined to exhibit economic strength with respect to any telecommunications services.
- (b) Upon conclusion of such proceeding, the Price Cap Regime shall come into force for a Designated Licensee, and the initial Price Cap Year shall begin, with each subsequent Price Cap Year commencing on the anniversary date of the beginning of such initial Price Cap Year.
- (c) The Commission shall determine the following elements of the Price Cap Regime through such proceeding:
 - (i) Which services shall be designated as Price Cap Services, based on a determination of economic strength of the Designated Licensee with respect to such services;
 - (ii) The composition of Price Control Baskets for all Price Cap Services;
 - (iii) The initial prices of the Price Cap Services within each Price Control Basket;
 - (iv) The precise Price Control Formula to apply to each Price Control Basket, including initial values and future means of calculating the "X" and "Z" factors;
 - (v) All other provisions and requirements of the Price Cap Regime, as deemed appropriate by the Commission in conformance with these Regulations.

(4) For each Designated Licensee, the Commission shall determine the Price Cap Regime Period.

Publication of rates, terms and conditions

8. Every service provider shall publish a schedule of the rates, terms and conditions applicable to all the telecommunications services it provides at least annually and upon any increases and decreases, in such form and manner as set forth in its licence and as the Commission may otherwise prescribe from time to time.

MADE this 23rd day of December, 2005.

**RICHARD TAUWHARE, MVO
GOVERNOR**