



## Decision of the President of the Communications Regulatory Authority No. (3) of 2015 Promulgating the Passive Civil Infrastructure Access Regulation

The President of Communications Regulatory Authority,  
Pursuant to the Telecommunications Law, promulgated by Law No. 34/2006 (especially Articles 18, 19, 45, 53, and 62),  
Amiri Decision No. 42/2014 Establishing the Communications Regulatory Authority,  
Decision of the Board of Supreme Council of Information and Communications Technology No. 1/2009 promulgating the Telecommunications by-law,  
Council of Ministers Decision No. 51/2014 Establishing the Telecommunication Infrastructure Coordination Committee, and  
Having consulted with stakeholders,  
Has decided as follows:

### Article 1

The Passive Civil Infrastructure Access Regulation attached hereto shall come into force.

### Article 2

All competent authorities, each within its jurisdiction, shall implement this Decision, which shall take effect three months after publication in the Official Gazette.

Mohammed Ali Al-Manai

President of Communications Regulatory Authority

# Passive Civil Infrastructure Access Regulation

## 1. Definitions

For the purposes of this Regulation, unless the context otherwise requires:

**Authority** means the Communications Regulatory Authority.

[**Access** means Access]

**Access Agreement** means an agreement between the Access Provider and Access Seeker for the provision of access to Passive Civil Infrastructure.

**Access Provider** means any person who owns, builds, or directly controls access to Passive Civil Infrastructure.

**Access Seeker** means a Service Provider.

**Access Request** means a request for access made by an Access Seeker, based on an Access Agreement, for access to Passive Civil Infrastructure.

**Bottleneck Facility** means a facility that cannot feasibly be economically or technically substituted in order to provide a Telecommunications Service in a reasonable amount of time or which based on prevailing state of competition is necessary to enable fair competition in the State of Qatar.

**Regulatory Framework** means the Telecommunications Law (Decree no 34 of 2006) and any decisions based on that law, including the Executive By-Law for the Telecommunications Law (Decree no 1 of 2009), and individual licenses.

**Passive Civil Infrastructure** means physical facilities or supporting facilities that are considered a Bottleneck Facility.

**Standard Access Offer** means a set of binding minimum terms and conditions to be included in an Access Agreement between an Access Providers and an Access Seekers.

## 2. Purpose and Application

2.1 The objectives of this Regulation are:

- (a) To establish the obligation for Access Providers to grant access to Access Seekers;
- (b) To enable Service Providers to seek access to Passive Civil Infrastructure;
- (c) To provide clarity and certainty in relation to the supply of access to Passive Civil Infrastructure by setting out minimum terms and conditions:
  - (i) on which an Access Provider will make the Passive Civil Infrastructure available to Access Seekers;
  - (ii) which an Access Seeker must meet in seeking access to the Passive Civil Infrastructure made available by the Access Provider; and
- (d) To be sufficiently flexible to deal with change as it occurs.

- 2.2 This Regulation does not apply to the following:
- (a) Real estate developments, unless they are of one hundred (100) residential or twenty (20) commercial dwellings and above or buildings of five (5) stories high or above.
  - (b) Electronic transmission equipment or telecom cables
- 2.3 Access Providers include:
- (a) Real estate developers;
  - (b) Service Providers;
  - (c) Government entities; and
  - (d) Other Non-Governmental Organizations (NGO) or private entities.
- 2.4 Passive Civil Infrastructure includes:
- (a) drop and lead in ducts, conduits, manholes, hand holes, cable trays, equipment mounting, riser shafts and overhead aerial;
  - (b) telecommunications towers, masts and rooftops;
  - (c) collocation spaces in telecommunications rooms and central offices, and cabinets, including ancillary collocation facilities, and any additional space which cannot be leased or otherwise disposed of, and which form part of the Telecommunications Network;
  - (d) equipment such as air conditioning units, back-up generators, and any associated storage facilities for such equipment such as cabins, racks, telecoms rooms or cupboards that are ancillary to the establishment of a Telecommunications Network; and
  - (e) means to access electrical power connections and the capacity for the required power.

### **3. Access Principles**

- 3.1 An Access Provider must provide access:
- (a) on reasonable terms and conditions;
  - (b) on a non-discriminatory basis, unless objectively justified;
  - (c) on terms and conditions proportionate to the request;
  - (d) on a timely basis in accordance with established processes;
  - (e) in accordance with transparent procedures;
  - (f) where it is technically feasible; and
  - (g) by negotiating in good faith for alternative solutions in cases of insufficient capacity.

### **4. Non-Discrimination Obligation**

- 4.1 An Access Provider must not discriminate:
- (a) between Access Seekers;
  - (b) in favour of any party;
  - (c) where the Access Provider supplies a service to itself, or in favour of itself; or
  - (d) on any basis including product, price, processes, quality and engineering rules.
- 4.2 An Access Provider is exempt from the obligation in previous paragraph if differences are objectively justifiable, and as far as the Access Provider notifies

in writing the Access Seeker and the Authority of such justifications, regardless of the ownership status of any entity.

## 5. Standard Access Offer

- 5.1 An Access Provider must only offer access to Passive Civil Infrastructure through a Standard Access Offer that is compliant with this Regulation.
- 5.2 A Standard Access Offer must follow the templates issued by the Authority, following consultations with stakeholders and the Passive Civil Infrastructure Committee.
- 5.3 The Standard Access Offer must set out, as a minimum:
- a description of each access component and the related procedures for seeking access, including forecasting, ordering, provisioning and billing procedures as well as ongoing operations and maintenance;
  - the process to enable Access Seekers to obtain information such as diagrams, maps and other information showing the location and routes of the Passive Civil Infrastructure;
  - the necessary technical specifications of access to any and all of the components of the Passive Civil Infrastructure;
  - processes for the reservation of capacity;
  - the applicable charges for access to any and all of the components of the Passive Civil Infrastructure;
  - the conditions related to service level agreements (SLAs), including the relevant monitoring mechanisms and where relevant provision for compensation should the service not be provided according to the SLAs;
  - the financial security requirements to be imposed, set against the terms and conditions of the facilities or services provided;
  - conditions related to maintenance, site access, and safety standards; and
  - conditions related to decommissioning of services.
- 5.4 Access Providers must not offer access to Passive Civil Infrastructure through a new Standard Access Offer, or materially change a previously approved one, unless approved by the Authority, in accordance with the following:
- If the Authority does not issue a decision within (10) working days, the Standard Access Offer is deemed approved.
  - If the Authority determines that the Standard Access Offer is in violation of the Regulatory Framework, it may issue an Order requiring the Access Provider to amend the Standard Access Offer, and provide guiding templates for this purpose.
  - If the Access Provider does not resubmit a compliant Standard Access Offer within (20) working days of notice of an Order issued under the previous paragraph, the amendment proposed by the Authority shall be deemed made by the Access Provider and approved by the Authority.
- 5.5 An Access Provider must publicly disclose (on its website or any other suitable media) all Standard Access Offers approved by the authority under previous paragraph no later than twenty (20) Working Days after the approval.

## 6. Negotiation

- 6.1 When an Access Provider negotiates an Access Agreement with an Access Seeker:
- (a) both parties must use their best endeavours to conclude the Access Agreements within sixty (60) Working Days of a written request to commence negotiations;
  - (b) negotiations must be conducted in good faith and a commercially reasonable terms and conditions.
- 6.2 An Access Provider must register with the Authority any Access Agreement within five (5) Working Days of its conclusion.
- 6.3 If negotiations are not completed within the sixty (60) Working Days, an Access Provider or Access Seeker may, at any time, request the Authority to intervene under the dispute resolution rules issued under Article 61 of the Telecommunications Law.

## 7. Ordering

- 7.1 An Access Request must be in writing, reasonable and contain at least the following information:
- (a) the name and contact details of the Access Seeker;
  - (b) the timeline for access for when access is required;
  - (c) the facilities and/or services in respect of which access is sought setting out the:
    - (i) Route Access Request (RAR): Defined start and end point of the required route, and/or;
    - (ii) Area Access Request (AAR) a specific area or development site as a whole or part;
  - (d) a forecast of the capacity the Access Seeker will require.
- 7.2 Access to Passive Civil Infrastructure may be requested in whole or in part.
- 7.3 The Access Provider must within ten (10) Working Days of receipt of an Access Request, respond to the Access Seeker in writing acknowledging receipt of the Access Request, and either accept or reject it.
- 7.4 If the Access Provider accepts the Access Request, the Access Provider must state reasonable timing for making available all schematics, diagrams and pertinent information detailing the passive Civil Infrastructure pertaining to the specifics of the Access Request.
- 7.5 If the access seeker does not provide information required with the Access Request, or the information provided is irregular, the Access Provider must inform the Access Seeker within (5) Working Days of the Access Request of any steps that need to be taken to complete the information required to process the Access Request, and give the Access Seeker five (5) Working Days for that purpose. Once the information is received from the Access Seeker, the Access Provider must reconsider the Access Request in accordance with this Regulation.
- 7.6 Without limiting any other grounds that may be relied upon under law, an Access Provider must not refuse an Access Request, except on the grounds that:

- (a) The Access Seeker has not provided all of the information required in accordance with this Regulation after being given the opportunity to rectify the omissions in accordance with the procedures above;
  - (b) It is not technically feasible to provide access to the facilities or services requested by the Access Seeker;
  - (c) The Access Provider has insufficient capacity to satisfy the request as the Passive Civil Infrastructure is already consumed to capacity or near full capacity, or reserved for future use by the Access Provider or another Access Seeker.
- 7.7 If a Passive Civil Infrastructure is reserved for use by another Access Seeker, such use must commence no later than six (6) months from the date such Access Seeker makes the Access Request; otherwise, it shall be considered available.
- 7.8 If access is refused due to capacity constraints, and without violating the capacity constraints requirements set out in the this Regulation, the Access Provider must offer alternative options to the Access Seeker within twenty (20) Working Days from the rejection notice.
- 7.9 The Access Provider and the Access Seeker may define shorter timeframes in their Access Agreement, but cannot extend the timeframe without the approval of the Authority upon reasonable justification.
- 7.10 If the Access Provider does not respond to the Access Request within the timeframe prescribed in this regulation, the parties may refer the dispute to:
- (a) the Passive Civil Infrastructure Committee for an amicable solution within five (5) Working Days, or
  - (b) the Authority in accordance with dispute resolution rules issued under Article 61 of the Telecommunications Law.

## **8. Access Provisioning**

- 8.1 An Access Provider must provide access to the Passive Civil infrastructure within twenty (20) Working Days of accepting an Access Request.
- 8.2 If an Access Provider cannot reasonably meet the accepted Access Request within the requested timeframe, the Access Provider must enter into good-faith negotiations with the Access Seeker in regard to an alternative reasonable timeframe for provisioning access to the Passive Civil Infrastructure.

## **9. Capacity Constraints**

- 9.1 Where new Passive Civil Infrastructure is to be deployed by an Access Provider, the Access Provider must offer to the Access Seeker the following:
- (a) to enter into a joint-investment agreement to build and finance the new Passive Civil Infrastructure, as far as the Access Seekers and the Access Provider are licensed Service Providers. The agreement shall be reciprocal and govern how both parties will build and share Passive Civil Infrastructure. The right of each party must be based on a percentage of the respective investments and corresponding capacity allocation.
  - (b) an Indefeasible Right of Use covering a minimum commitment period of twenty (20) years; or

- (c) a lease agreement upon a reasonable and proportionate minimum commitment from an Access Seeker.
- 9.2 In order to foster investment in Passive Civil Infrastructure by Service Providers, a “surcharge” may be applied to (b) and (c). The surcharge shall be determined at the sole discretion of the Authority.
- 9.3 If an Access Provider is unable to provide access due to insufficient capacity in existing Passive Civil Infrastructure, it must offer the Access Seeker, if technically feasible, to:
- (a) scale the Passive Infrastructure and offer the Access Seeker an Indefeasible Right of Use covering a minimum commitment period of twenty (20) years; or
  - (b) scale the Passive Infrastructure and offer the Access Seeker to enter into a lease agreement upon minimum commitment from Access Seekers.
- 9.4 Access Providers and Access Seekers must abide by the following:
- (a) Access Providers and Access Seekers must enter into confidentiality agreements with rules governing how information about an Access Provider’s roll-out plans are not used by Access Seekers to gain unfair competitive advantage;
  - (b) an Access Provider must notify all Access Seekers in writing of any planned construction work of a Passive Civil Infrastructure for purposes of developing an infrastructure sharing plan prior to the design and planning stages and no less than six (6) month prior to commencing the planned construction work;
  - (c) An Access Provider must consult with all Access Seekers on the design and planning of the planned construction works; and
  - (d) Access Seekers must respond to the request to develop the infrastructure sharing plan within one (1) month from receipt of the build/change notification, subject to subsections (a) to (c) above.

## **10. Removal or Modification of Existing Physical Infrastructure**

- 10.1 An Access Provider must issue a notice in writing to Access Seekers to whom access has been granted prior to conducting any civil works necessitating the removal or modification of any component of the Passive Infrastructure. The Access Provider must state in the notice the commencement date and duration of the removal or modification work. Except in cases of emergency, the notice must be issued no less than three months prior to the commencement of the planned works.
- 10.2 For any civil work carried out by an Access Provider which involves modification of the Passive Infrastructure, the Access Provider must ensure that the modified infrastructure is compliant with the Regulatory Framework, through the following:
- (a) Where the Passive Civil Infrastructure was compliant with the Regulatory Framework, the Access Provider shall reinstate the Passive Civil Infrastructure to its original condition of compliance, and
  - (b) Where the Passive Civil Infrastructure was not compliant with the Regulatory Framework, the Access Provider must proceed to do all the necessary improvements to the Passive Civil Infrastructure to ensure



compliance, subject to feasibility and long term commitment from Access Seekers for use of the modified infrastructure.

## 11. Charging Principles

- 11.1 Access to existing and new Passive Civil Infrastructure must be charged based on the cost of efficient service provision, according with the following principles:
- (a) an Access Provider must be capable of demonstrating that charges are derived from cost;
  - (b) Charges must not be based on the position the Access Provider enjoys in the market or in the area;
  - (c) Only costs which are directly associated with the provision of the Passive Civil Infrastructure can be taken into account.; and
  - (d) Charges shall be claimed only for the access capacity made effectively available by the Access Provider to the Access Seeker and no minimal charge shall be claimable.
- 11.2 The charges may include a reasonable rate of return on investment, and the following cost elements:
- (a) Depreciation of the relevant assets and cost of capital;
  - (b) Operating costs for the Passive Civil Infrastructure in direct relation to the access effectively granted;
  - (c) Operating cost for maintenance in direct relation to the access effectively granted; and
  - (d) Wholesale cost management.
- 11.3 An Access Provider must submit all charges relating to access to Passive Civil Infrastructure, with justifications, to the Authority for approval at least thirty (30) Working Days prior to implementation date; and the Access Provider must adjust the charges as directed by the Authority.
- 11.4 The Authority may consult with the Access Provider and may rely on international best practice in seeking any adjustments to the charges.
- 11.5 Access Providers must maintain a record of all applicable charges issued and payments received.
- 11.6 If the Access Provider's charges are not in accordance with the Regulatory Framework, the Authority may, at any time, set the relevant charges to be applied by the Access Provider.

## 12. Confidentiality

- 12.1 Whenever any or all of the components of the Passive Civil Infrastructure is supplied to an Access Seeker the following provisions apply:
- (a) An Access Provider will keep all Access Seeker confidential information in confidence and will not disclose Access Seeker confidential Information to any third party other than as necessary for the provision of the Access to that Access Seeker;
  - (b) An Access Seeker will not use the Access Provider confidential information other than for the stated purpose.

## 13. Financial Security



- 13.1 An Access Provider and an Access Seeker must require the other to provide a financial security of a reasonable amount set against the respective obligations in the Access Agreement.
- 13.2 The Access Provider and Access Seeker shall be entitled to draw down on the security payment in accordance with the terms and conditions set out in the Access Agreement.

#### **14. Reporting**

- 14.1 An Access Provider must:
- (a) Supply at least on an annual basis to the Authority all information on deployment of Passive Civil Infrastructure already underway or planned over the next six (6) months;
  - (b) Provide a report to the Authority and to Access Seekers which signed an Agreement based on Standard or Reference Offers on the service level agreement as prescribed in accordance with the Standard Access Offer.

#### **15. Monitoring**

- 15.1 Where the Authority has reasonable grounds to believe that there has been a violation of this Regulation, or where the Authority has received a complaint from any Access Provider or Access Seeker concerning non-compliance with this Regulation, the Authority may request in writing such information as is relevant to support its investigation of non-compliance with this Regulation which must be submitted within a reasonable period of time.
- 15.2 All complaints made to the Authority shall be managed in accordance with Article 61 of the Telecommunications Law and the Dispute Resolution Process, which shall not limit any party's recourse to other legal remedies, including using the administrative courts.
- 15.3 Access Providers and Access Seekers must enable their respective technical systems to interface with an automated infrastructure management system implemented and operated by the Authority no later than six (6) months after the Authority implements the relevant system.

#### **16. Non Compliance Fee**

- 16.1 The Authority may impose a non-compliance fee on an Access Provider or an Access Seeker for breach of any obligation prescribed in this Regulation of Ten Thousand (10,000) Qatari Riyals for each specified non-compliance.
- 16.2 In the case of a continuing breach, the Authority may impose a non-compliance fee on the Access Provider and/or Access Seeker of One Thousand (1,000) Qatari Riyals for each day, or part of a day during which the specified non-compliance continues after a finding of non-compliance.
- 16.3 In the case of repeated non-compliance incidences, the non-compliance fee may be doubled for each specified non-compliance incident.
- 16.4 The Authority shall assess the appropriate non-compliance fee based on the seriousness of the non-compliance and its effect, on a case by case basis.

16.5 Notwithstanding the above, the Authority may issue an injunction to require the Access Provider and/or Access Seeker to do, or refrain from doing specific acts related to the specified non-compliance.

**17. Telecommunication Infrastructure Coordination Committee**

17.1 The powers of the Telecommunication Infrastructure Coordination Committee under this regulation is limited to making recommendations, and does not extend to decision making or dispute resolution.

**18. Third Party**

18.1 The Access Agreement must be signed between the Access Provider and the Access Seeker, and if the Access Provider delegates the operation or management of such Passive Civil Infrastructure to a third party, including Service Providers, the third party must adhere to all the obligations pursuant to this Regulation and such third party delegation will not exempt the Access Provider of any of its obligations under this Regulation.

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