

SAINT CHRISTOPHER AND NEVIS

STATUTORY RULES AND ORDERS

No. 31 of 2008

TELECOMMUNICATIONS (WHOLESALE) REGULATIONS, 2008

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation.
2. Commencement.
3. Interpretation.
4. Availability of retail services for wholesale.
5. Dominant wholesale service provider.
6. Standard wholesale service discount.
7. Special wholesale services.
8. Special wholesale service tariff.
9. Competitive safeguards.

SAINT CHRISTOPHER AND NEVIS

STATUTORY RULES AND ORDERS

No. 31 of 2008

TELECOMMUNICATIONS (WHOLESALE) REGULATIONS, 2008

IN EXERCISE of the power conferred by section 54 of the Telecommunications Act, No. 2 of 2000, the Minister responsible for Telecommunications makes the following Regulations:

[Published 30th October 2008, Official Gazette No. 52 of 2008]

1. **CITATION.** These Regulations may be cited as the Telecommunications (Wholesale) Regulations, 2008.

2. **COMMENCEMENT.** These Regulations shall come into force on the date of publication in the Gazette.

3. **INTERPRETATION.** In these Regulations:

"Act" means the Telecommunications Act, No. 2 of 2000;

"dominant wholesale service provider" means a public network operator who is designated by the Commission as dominant for the purposes of providing special wholesale services under regulation 5;

"public network operator" means a person who provides telecommunications services between two parties neither of whom is affiliated with such person, accepts the rights and obligations of public network operators and is licensed to operate a public telecommunications network;

"public telecommunications network" means a telecommunications network used for the provision of telecommunications services to the public;

"retail service" means a telecommunications service that a public network operator provides at retail to end-user customers;

"special wholesale service" means a wholesale service which consists of the essential components or functions of a total retail service, and any ancillary services necessary for other providers of telecommunications services to efficiently provide a total retail service to end-users;

"telecommunications services" means services provided by a telecommunications provider;

"total retail service" means retail service that includes the components or functions required to be offered on a wholesale basis as a special wholesale service as determined in regulation 7; and

"wholesale service" means a retail service or element of a retail service that is purchased from a public network operator by a telecommunications provider for resale to the public.

4. AVAILABILITY OF RETAIL SERVICES FOR WHOLESALE. (1) A public network operator shall make available all of its retail services as wholesale services to a telecommunications provider on a nondiscriminatory basis and without discriminatory conditions or limitations.

(2) A wholesale service that is expressly intended for one category of customers shall not be resold to another category of customers.

(3) A public network operator shall not discriminate in favour of its end-user customers or against other providers of telecommunications services.

5. DOMINANT WHOLESALE SERVICE PROVIDER. (1) The Commission, acting on the recommendation of ECTEL, and by notice published in the *Gazette*, may, with respect to a particular market or markets, designate a public network operator as a dominant wholesale service provider for the purposes of providing retail services at a discount and providing special wholesale services.

(2) If the Commission has determined, after a public consultation process, that a public network operator:

(a) enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers in a market or markets for telecommunications services in Saint Christopher and Nevis; and

(b) it is in the best interests of consumers of the telecommunications services, the public network operator be so designated

the Commission shall designate the public network operator a dominant wholesale service provider.

(3) The Commission may undertake a consultation process which will commence with a preliminary determination of market dominance and the designation of one or more dominant wholesale service providers.

(4) The Commission shall notify a public network operator who is preliminarily determined and designated by the Commission to be a dominant wholesale service provider of the determination and designation and shall provide the public network operator with the opportunity to respond in writing within 30 days of the preliminary determination and designation.

(5) The Commission shall cause to be published a notice of the public network operator's response in a newspaper of wide circulation.

(6) Interested parties may comment in writing to the Commission within 15 days of the publication of the response of the network operator.

(7) The Commission shall forward the comments of all interested parties to the affected network operator.

(8) The affected public network operator shall reply to interested parties within 15 days of such comments being received.

(9) The Commission shall issue its final determination of market dominance no later than 30 days after all comments have been filed with it.

(10) Notwithstanding the foregoing sub-regulations, a public network operator may consent to being treated as a dominant wholesale service provider.

(11) The Commission, acting on the recommendation of ECTEL or acting on application filed by a dominant wholesale provider, and by notice published in the *Gazette*, may determine that the conditions specified in sub-regulation (1) of this regulation no longer exist with respect to a particular market or markets and, if it so determined by the Commission, shall remove the designation of dominant wholesale provider from a public network operator.

6. STANDARD WHOLESALE SERVICE DISCOUNT. (1) The Commission, acting on the recommendation of ECTEL and by notice published in the *Gazette*, may determine, after a public consultation process, a standard wholesale discount from retail prices at which dominant wholesale service providers must offer wholesale services.

(2) A dominant wholesale service provider may apply for a standard wholesale discount to be amended.

(3) The standard wholesale discount shall be applied to all retail services of a dominant wholesale service provider until such time as the Commission has determined that a different discount is justified for any retail service or groups of retail services.

(4) Where the Commission determines that a different wholesale service discount is justified, the Commission shall notify the public of the new wholesale service discount that is to be applied.

(5) The new wholesale service discount shall take effect within thirty days of publication by the Commission.

(6) The wholesale service discount shall be calculated to reflect the costs associated with providing a retail service to end-user customers that the dominant wholesale service provider avoids when making such service or services available as wholesale services offset by the costs the dominant wholesale service provider may incur to make such retail service or services available as wholesale services.

7. SPECIAL WHOLESALE SERVICES. (1) The Commission, acting on the recommendation of ECTEL and by notice published in the *Gazette* and on the Commission's website, may require, after a public consultation, a dominant wholesale service provider to make available special wholesale services.

(2) A special wholesale service shall consist of components or functions of a retail service which are determined to be essential in order for other providers of telecommunications services to offer a total retail service to end-users that is competitive with the total retail service of the dominant wholesale service provider and which the other providers of telecommunications services cannot economically supply themselves or obtain from a public network operator other than the dominant wholesale provider.

(3) A special wholesale service shall include either the essential components or functions of the total retail service, and any ancillary services necessary for other providers of telecommunications services to efficiently provide the total retail service.

8. SPECIAL WHOLESALE SERVICE TARIFFS. (1) A dominant wholesale service provider shall publish and file with the Commission tariffs for special wholesale services.

(2) The tariffs for special wholesale services shall be non-discriminatory and shall comply with the competitive safeguards contained in Regulation 9 (1) and 9 (2).

(3) The Commission shall have the authority to ensure that the special wholesale service tariffs are compliant with the Act and its Regulations, including the competitive safeguard contained in Regulation 9(1) and 9 (2).

9. COMPETITIVE SAFEGUARDS. (1) When a dominant wholesale service provider seeks to raise the price of a special wholesale service or reduce the price of the corresponding total retail service, the dominant wholesale service provider shall demonstrate to the satisfaction of the Commission that the prices of its special wholesale services satisfy the imputation standard contained in sub-regulation (2) of this regulation.

(2) The difference between the price of the total retail service and the price of the corresponding special wholesale service shall not be less than the difference between the long-run incremental cost of the total retail service and the long-run incremental cost of the corresponding special wholesale service.

(3) Where a dominant wholesale service provider seeks to change the price of a retail service the dominant wholesale provider shall make a corresponding adjustment to the wholesale price, which shall be applied to all agreements in force at the time of the change in the retail price.

Made this 10th day of October, 2008

SAM CONDOR
Minister responsible for Telecommunications