



DRAFT PRICE CAP REGULATORY PROCEDURES 2018

ATRA – PROCEDURE – 003

Afghanistan Telecommunications Regulatory
Authority (ATRA)

ISLAMIC REPUBLIC OF AFGHANISTAN

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1 PART I PRELIMINARY

The Telecom Law of the Islamic Republic of Afghanistan (“Afghanistan”) gives the Afghanistan Telecommunications Regulatory Authority (ATRA) the responsibility to regulate the telecom sector of Afghanistan. Accordingly, the ATRA is required to promote and protect the interests of users and providers of telecommunication services as well as to ensure fair competition in the telecommunication sector.

ATRA intends to establish price cap Regulatory Procedures in the Optical Fiber Cable market (“OFC”) in compliance with the principles that these regulations shall be established with the view to achieve the greatest possible degree of pricing flexibility and stability compatible with safeguarding and protecting the interest of consumers; that these Regulatory Procedures shall apply equally to comparable providers or users of any regulated telecommunication service under the OFC market; and that all tariffs aligned with said OFC market shall be at a level which provide a reasonable rate of return on investments taking into account the cost of operation.

1.1 Preamble

Article 22 of the Telecommunications Law of 2005 obligates ATRA to institute and maintain appropriate measures for the purpose of preventing Service Providers from engaging in anti-competitive practices, including the identification of telecommunications markets, determining dominance and abuse of dominance in the OFC markets and responding to anti-competitive agreements.

1.2 Purpose

These draft Regulatory Procedures are designed to set out the principles and procedures which ATRA will follow in reviewing the competitive conditions within the OFC market in Afghanistan. While the ATRA anticipates following the principles outlined here, there may also be differences in how individual cases or allegations of anti-competitive behavior are assessed, and ATRA reserves the right to consider other factors based on best practices that are not listed in these draft Regulatory Procedures. These draft Regulatory Procedures contain guidelines explaining the obligations resulting from the implementation by the ATRA of the applicable competition-related provisions of the Telecom Law, how to fulfill them, and the procedures that the ATRA will apply in connection therewith. No set of guidelines can provide specific answers to every competition question that might arise under these provisions and users are reminded that

the ATRA will evaluate each case in light of its own facts and that the Telecom Law and specific regulations or regulatory procedures promulgated by the ATRA are the only authentic legal basis.

1.3 Scope of Application

These Regulatory Procedures apply to all licensed OFC Service Providers leasing capacity, active and inactive optical fiber infrastructure from another optical fiber Service Providers

1.4 Acronyms and Definitions

Acronyms and definitions in these Regulatory Procedures are contained in ANNEX I.

1.5 Terms and Definition

Terms and definitions used in these Regulatory Procedures are contained in ANNEX II, the Telecom Law or related regulatory procedures. For ease of doubt, in the event of a conflict between definitions provided in these Regulatory Procedures and the Telecom Law, the definitions in the Telecom Law will apply.

2 PART II: CONSULTATION PROCESS

2.1 Consultation Process

In accordance with the ATRA's Guidelines for Consultation Process to Develop Regulations (Consultation Guidelines) the ATRA will carry out a consultative exercise comprising of internal and external stakeholders to seek input(s) before a formal establishment of a price cap is effectuated. The ATRA will release a public consultation document to seek informed views of stakeholders and other interested parties on a draft proposed price cap regulatory procedure and will only take into account comments received within a specified period. In furtherance to the series of consultative internal and public stakeholders consultations that have been conducted by ATRA, ATRA intends to carry out a final in-person public stakeholder exercise to avail the opportunity to answer questions and provide clarity where applicable, and to also relay ATRA's final positions on pertinent issues for which input(s) have been sought.

2.2 Price Cap Formula or Basis

The ATRA has developed a price cap methodology which it will use to assist in the determination of price caps to be applied to wholesale capacity supplied by OFC licensed operators in Afghanistan. The formula or basis which the ATRA shall use to calculate price caps takes into consideration the following cost components:

- 2.2.1 Amortization of total investment in its OFC infrastructure (including debt, equity, license fee, taxes);
- 2.2.2 Cost of capital (Weighted Average Cost of Capital);
- 2.2.3 License fees payable to ATRA;
- 2.2.4 Cost of investment;
- 2.2.5 Operating and Maintenance (O&M)
- 2.2.6 Licensed Operators' Running Costs
- 2.2.7 Other costs (accounting, auditing, legal support, technical engineering, etc.);
- 2.2.8 Training, consulting and engineering services;
- 2.2.9 Annual license fee, defined by ATRA;
- 2.2.10 Contribution by Licensed Operators to the Telecommunications Development Fund (TDF);
- 2.2.11 Costs resulting from obligations relating to environmental and social impact mitigation and monitoring, if any;

2.3 Price Cap Module

- 2.3.1 The Price Cap Models in ANNEX I1, III and IV shall be instituted for leasing fiber capacity. These models shall be in enforce for the period of 3 (three) years. ATRA may decide to revise the Price Cap Module before the expiration of the 5 (five) years only in the event that there is a significant change in the Telecom Law, the OFC License, these Regulatory Procedures, or other relevant laws.
- 2.3.2 A copy of the Price Cap Model used, among other factors, to assist ATRA in determining the Price Caps may be reviewed at ATRA's offices.]

2.4 Request for Information

- 2.4.1 All information submitted to the ATRA by a Service Provider with pursuant to the Telecom Law, these Regulatory Procedures, or any rules, decisions, orders, notices or guidelines issued by the ATRA, must be accurate, complete and responsive to the ATRA's request.

- 2.4.2 Service Providers must respond promptly and completely to any request from the ATRA for information, and in any event within a period which is no longer than twenty-one (21) days from the date of the request unless ATRA directs otherwise.
- 2.4.3 Any failure by a Service Provider to comply with any ATRA's information request, and any destruction, disposal, falsification or concealment of requested documents or information, constitutes a contravention of these Regulatory Procedures for which the ATRA may take enforcement action under these Regulatory Procedures or the Telecom Law.

2.5 Request for Confidential Treatment of Information

The clauses below relate to request for confidential treatment of information and are in pursuant to the Telecom Law, the Confidentiality, Dispute, and Compliance Regulatory Procedures, these Regulatory Procedures or other related rules, decisions, orders, notices or guidelines.

- 2.5.1 A Service Provider submitting information to the ATRA, pursuant to the requirements of the Telecom Law, the Confidentiality, Dispute, and Compliance Regulatory Procedures, these Regulatory Procedures or other related rules, decisions, orders, notices or guidelines may request that the information submitted be treated as confidential. All information for which a Service Provider is seeking confidential treatment must be provided separately from the documents which do not contain confidential information and be clearly marked "Confidential". The ATRA may not accept requests to treat all information submitted as "Confidential". The Party requesting Confidentiality should take reasonable measures to minimize the amount of information for which they request Confidentiality treatment.
- 2.5.2 In the absence of a properly supported Confidentiality request, all information submitted to the ATRA shall be deemed to be appropriate for disclosure in pursuant to the Telecom Law, the Confidentiality, Dispute, and Compliance Regulatory Procedures, these Regulatory Procedures, other related rules, decisions, orders, notices or guidelines.

2.6 Standards Governing Grant of Confidentiality Treatment

In deciding whether to grant a request for confidential treatment, the ATRA will consider the following factors:

- 2.6.1 Whether the information for which the Requesting Party requests Confidentiality treatment contains commercially sensitive information (including information that is subject to a pre-existing non-disclosure agreement with a third party); or
- 2.6.2 Whether the disclosure of the information would have or would be likely to have a material adverse impact on the Requesting Party; or
- 2.6.3 Whether the disclosure of the information is, on balance, required in the public interest; or,
- 2.6.4 Any combination of the above factors.
- 2.6.5 The ATRA generally considers information to be commercially sensitive if:
- 2.6.6 The Requesting Party has demonstrated that disclosure would cause harm to the Service Provider, including by providing an inappropriate commercial benefit to the Service Provider's competitors; or
- 2.6.7 The information describes the Requesting Party's business procedures, technical or financial matters, information proprietary to the Service Provider, and practices, plans or its assessment of market conditions or similar matters are likely to be commercially sensitive.

2.7 Standards Governing Confidentiality

- 2.7.1 All information for which the ATRA grants a request to treat as confidential under ATRA's Confidentiality, Dispute, and Compliance Regulatory Procedures
 - 2.7.1.1 Must be provided by the Requesting Party only to the ATRA, which may consider the information for purposes of resolving any matter under these Regulatory Procedures or any related rules, decisions, orders or notices issued by the ATRA, but which shall restrict access and disclosure to ATRA personnel or contractors involved in resolution of the matter;
 - 2.7.1.2 Will be excluded from all documents which are either provided to the other Parties, or refrain from publishing, or e made publically available; and
 - 2.7.1.3 Will be protected by ATRA personnel or contractors against improper disclosure or use, to the extent reasonably possible.

2.8 Denial of Confidential Treatment

- 2.8.1 If a request for confidential treatment is rejected by the ATRA, the ATRA will provide written reasons for its decision.
- 2.8.2 If the Requesting Party fails to take either of the actions described in sub-sections 2.2.1, 2.2.2, and 2.3 of these Regulatory Procedures within the specified period, the ATRA will deem the Requesting Party to have withdrawn its request for confidential treatment of the information. In this case the ATRA may consider, and where it deems appropriate, disclose the information provided.
- 2.8.3 This clause 2.4 shall not affect the general obligation on Service Providers or other parties to interconnection proceedings to provide complete and accurate information to the ATRA
- 2.8.4 ATRA may, in its sole discretion, make a preliminary decision on a request for Confidentiality treatment, after which the Requesting Party may provide additional information to assist the ATRA in issuing a final decision.

2.9 Review of ATRA's Decision Regarding Confidentiality

- 2.9.1 Right to Review
 - 2.9.1.1 Any Requesting Party that has a confidentiality request rejected pursuant to Section 2.4 may;
 - 2.9.1.1.1 Submit a request to ATRA for reconsideration ("the Reconsideration Request") within fourteen (14) days of receipt by the Requesting Party of the statement of reasons for the rejection;
 - 2.9.1.1.2 Submit a revised confidentiality request, that takes account of the ATRA's determination (including by reducing the scope of the confidentiality request) within fourteen (14) days of receipt by the Requesting Party of the statement of reasons for the rejection;
 - 2.9.1.1.3 In the event that a Reconsideration Request is submitted and the ATRA does not change its rejection of confidential treatment following the Reconsideration Request, the Requesting Party may file for Judicial Review against ATRA's decision within sixty (60) days of receipt of ATRA's denial decision; or

- 2.9.1.1.4 In the event that a Reconsideration Request is not submitted, file for a Judicial Review within sixty (60) days of receipt by the Requesting Party of ATRA's denial for Confidentiality, ATRA's decision shall stand.
- 2.9.1.2 When filing a Judicial Review, the Requesting Party shall copy the ATRA on all correspondence and materials relevant to the Judicial Review.
- 2.9.1.3 The ATRA will take reasonable steps to notify all relevant parties in the event it receives a Reconsideration Request or on becoming aware that a decision is under Judicial Review.
- 2.9.1.4 A Party may file for a Judicial Review of any matter that is the subject of a Reconsideration Request. In such a case, the Party must immediately notify the ATRA in writing of the Judicial Review at which time the Reconsideration Request shall be stayed pending a final determination under the Judicial Review.

2.10 Procedures Governing Reconsideration

- 2.10.1 Service Providers and other Parties entitled to relief under these Regulatory Procedures are expected to present all relevant facts and arguments to the ATRA before it renders its decision in response to a Confidentiality request. A Party may not present new facts, or raise new arguments in a Reconsideration Request unless the Party, for reasons which are acceptable to the ATRA:
- 2.10.1.1 Could not have presented the facts or raised the arguments before the ATRA rendered its decision; or
- 2.10.1.2 Could not have anticipated the importance of the facts or arguments prior to seeing the ATRA's statement of reasons for the rejection,
- 2.10.2 The ATRA will issue its decision on the Reconsideration Request within thirty (30) days of the date of filing the Reconsideration Request

2.11 Judicial Review of ATRA Decision on Reconsideration Request

- 2.11.1 A Service Provider may not ask the ATRA to reconsider any decision issued in response to a Reconsideration Request. However,
- 2.11.2 The Requesting Party may file for a Judicial Review in court of the decision of the ATRA issued in response to a Reconsideration Request within sixty (60) days of the decision.

2.12 Dispute Resolution

In the event of any Dispute arising between the Parties or the ATRA relating to or arising out of these Regulatory Procedures on Price Cap, including but not limited to the implementation, execution, interpretation, rectification, termination or cancellation of this Agreement, the Parties shall use their reasonable endeavors to resolve such Disputes. In the event that all efforts among the Parties fail to materialize in a settlement of said Dispute, one or both Parties shall have the right to invoke the ATRA's Confidentiality, Dispute, and Compliance Regulatory Procedures.

2.13 Breach and Suspension

These Price Cap Regulatory Procedures shall apply to all OFC Licensed Operators providing or leasing service under the jurisdiction of the Afghanistan telecom sector. In the event that one Party's Network seriously and adversely affects the normal operation of another Party's Network, network security, or is reasonably believed to pose safety to an individual, the Affected Party shall immediately inform the Affecting Party. The Affecting Party shall take immediate action to resolve the problem. In the event that normal operation of the Network is not restored, or removal of the threat to Network security or the threat to any person's safety is still eminent, or not removed within a reasonable period of time, or if the matter is extreme, and the provisions of the Confidentiality, Dispute, and Compliance Regulatory Procedures have been exhausted in an attempt to resolve the issues, the Affected Party may engage and request the ATRA to suspend, but only to the extent necessary and for such period as it may consider reasonable to ensure the normal operation of its Network or to remove the threat to Network security or safety. Such engagement with the ATRA shall be made in writing and a copy sent to the other Party. Pursuant to the ATRA's Confidentiality, Dispute, and Compliance Regulatory Procedures, no party shall arbitrarily disconnect an already existing Interconnection Link without the explicit authorization of the ATRA.

- 2.13.1 In the event that the ATRA authorizes the suspension or termination of an Interconnection Link, the terms and conditions under which said authorization is given shall be as follows, if:
- 2.13.1.1 The Affecting Party has committed a service affecting material breach of this agreement, and the Affected Party has given a five (5) Days-time limit (or shorter in case of emergency) by serving a written notice of such breach to the Affecting Party, copied to ATRA, specifying the breach and requiring the Affecting Party to remedy the breach, as well as stating the consequences of failure to remedy would lead to potential petition to ATRA to suspend or terminate the Interconnection Link;
- 2.13.1.2 The Affecting Party has committed a non-service affecting material breach of this agreement (including but not limited to failure to pay any sum, whether in respect of any one or more Services, for which the Affecting Party has been invoiced), the Affected Party has given a ten (10) Days-time limit by serving a written notice of such breach to the Affecting Party, copied to ATRA, specifying the breach and requiring the Affecting Party to remedy the breach, as well as stating the consequences of failure to remedy would lead to potential petition to ATRA to suspend or terminate the Interconnection Link;
- 2.13.1.3 In the Affected Party's reasonable opinion, the Affecting Party attempted to use, is likely to use, or has used any Service in contravention of the Telecom Law and the Affected Party has the necessary confirmation from ATRA that the Affecting Party is in contravention of the Telecom Law;
- 2.13.1.4 Any material information provided by the Affecting Party to the Affected Party is untrue, false, misleading or
- 2.13.1.5 Inaccurate and has an adverse material impact on the Affecting Party in relation to its supply of Services; or
- 2.13.1.6 Where an Interconnection Link has been established, the Affecting Party fails to satisfy, or no longer satisfies, the requirement for Interconnection Link Services, in which case, per the ATRA's authorization, suspension may be limited to those Services to which the failure relates.

- 2.13.1.7 After first giving advance notice to the Affecting Party of its intention to seek the written approval of ATRA to suspend the Agreement or Services, and only when ATRA has explicitly given said authorization; and only to the extent necessary to address the relevant cause of the suspension. The Affected Party will lift the suspension of the Agreement or Services (as the case may be) as soon as possible after the reason for the suspension has ceased.
- 2.13.2 If an Agreement is suspended under this clause 2.6.2 for more than sixty (40) Days, the Affected Party may terminate the Agreement with immediate effect by giving the Affecting Party written notice, copied to ATRA.
- 2.13.3 Upon suspension of Services, the supply of the suspended Service will cease; notwithstanding, the provision of other Services not covered by the suspension will continue and not be affected in accordance with clause 2.6.2;

2.14 Review of Price Cap

- 2.14.1 This Price Cap is valid from February, 2018 and shall remain enforced until:
- 2.14.2 A new Price Cap is published by ATRA; or
- 2.14.3 A material change occurs in the Telecom Law, these Regulatory Procedures or other relevant laws.
- 2.14.4 This Price Cap may be reviewed or amended in order to comply with applicable laws and regulations. ATRA reserves the rights to impose the provisions and obligations of this Price Cap.

3 PART III: PRICE CAP FORMULA AND INVOICING AMONG PARTIES

3.1 Billing Format

3.1.1 Billing for Interconnection Link Services

Interconnection Provider will invoice the Interconnection Seeker for Interconnection Link Services in accordance with the charging structure agreed by both parties. The commencement date of charging for Interconnection Link Services will be from the date of Service Handover. Billed amounts for Interconnection Link Services will include recurring charges, dependent and independent of distance in addition to installation charges.

3.2 Payment

- 3.2.1 Subject to the provisions stated below, all charges are due and payable by the Due Date. If the Billed Party initiates a Billing Dispute with respect to an amount due under an invoice, but such Billing Dispute is not resolved before the Due Date; and the amount subject to Dispute is less than or equal to a Tolerable Discrepancy, then the total amount of the invoice is due and payable on the Due Date. If the Billed Party initiates a Billing Dispute with respect to an amount due under an invoice, but such Billing Dispute is not resolved before the Due Date; and the amount subject to dispute is more than a misstatement or Tolerable Discrepancy, then the balance amount of the invoice that is not subject to the Billing Dispute is due and payable on the Due Date.
- 3.2.2 Notwithstanding any pending Billing Dispute, if either Party defaults in the payment when due of any sum payable by that Party under this agreement its liability shall be increased to include interest on such sum from the Due Date until the date of actual payment (both before and after judgment) at the annual rate which is five (5) percentage points above the base rate of Afghanistan Central Bank during such period. All such interest shall be calculated on the basis of the actual number of days elapsed, over a Calendar Year and compounded at monthly rates. All applicable Taxes and Surcharges, Government royalties and fees will be included in the charges. The Interconnection Seeker shall be liable for those charges.

4 PART IV: INTERCONNECTION LINK SERVICE

4.1 Services Forecasting

- 4.1.1 Interconnection Provider and Interconnection Seeker shall provide forecasts for the Services in good faith and use all reasonable endeavors to ensure that forecasts are as accurate as possible.
- 4.1.2 The Interconnection Provider must provide a separate forecast each Quarter for new Interconnection Paths, Interconnection Links, capacity on Interconnection Links for a three (3) year period and must update that forecast on a rolling basis each quarter, unless otherwise agreed between the Parties.

4.2 New Services

- 4.2.1 Interconnection Provider or the Interconnection Seeker may, at any time, request from either Party an Agreement amendment to interconnect their respective Networks for the provision of:
 - 4.2.1.1 Any Service or facility which the Requested Party provides either to itself or under an Interconnection Agreement with another Licensed Operator
 - 4.2.1.2 A new Service, belonging to a Relevant Market in which Interconnection Provider is designated as Dominant Service Provider, not currently provided or able to be provided under an Interconnection Agreement and has not previously been supplied pursuant to an Interconnection Agreement or any other agreement between the Requested Party and any other Interconnection Seeker

- 4.2.2 Such requests shall be clearly marked as a request for a new Service pursuant to this clause 5.2.
- 4.2.3 Following a request, Interconnection Provider or the Interconnection Seeker shall treat the other Party in a fair and professional manner and offer the Service or facility on the basic applicable standard tariff terms and conditions.
- 4.2.4 The Party making the request shall provide the Party receiving the request with a written statement of its requirements at the time of its request, which must include the following information:
 - 4.2.4.1 Details of the New Interconnection Service or change to an existing Interconnection Service;
 - 4.2.4.2 The locations at which the New Interconnection Service or change to an existing Interconnection Service are required;
 - 4.2.4.3 Other relevant details sufficient to enable the other Party to assess whether a plan can be constructed to meet the request in the timescale sought;
 - 4.2.4.4 Any other information which the other Party would reasonably consider necessary.
- 4.2.5 The Party receiving the Request shall acknowledge receipt of the Request no later than 5 (five) Days after receipt of said Request.
- 4.2.6 The Party receiving the request shall confirm whether the statement of requirements is sufficiently detailed to enable it to provide the requested Service. This confirmation shall be done no later than ten (10) Days of receipt of the Request, unless otherwise agreed by the parties. The Party receiving the Request shall request any further clarification it may reasonably require.
- 4.2.7 Subject to the sufficiency of the statement of requirements, the Party receiving the Request shall state in writing whether it is willing to negotiate in good faith in order to enter into negotiations not later than twenty (20) Days after the receipt of the statement of requirements, unless otherwise agreed by the Parties.

- 4.2.8 In the event that the Party receiving the request indicates that it is willing to negotiate the Request, the Parties would then commence negotiations in good faith on the technical and commercial aspects of the New Interconnection Service or change to an existing Interconnection Service within twenty (20) Days after receipt of the statement of requirements.
- 4.2.9 If the Parties cannot agree on the technical and commercial terms for the New Interconnection Service or change to an existing Interconnection Service, or the Party receiving the request indicates that it is not willing to negotiate or enter into an agreement, either of the Parties may notify the other Party of a Dispute in accordance with the ATRA Confidentiality, Dispute, and Compliance Regulatory Procedure.
- 4.2.10 If the request is for a new Interconnection Service, the agreed technical, operational and commercial terms shall be incorporated into a revision to this agreement and submitted to ATRA for approval. Such terms shall be included in the Interconnection Agreement as appropriate.
- 4.2.11 Any withdrawal of an interconnection Service shall be notified to ATRA for approval and to the Interconnection Seeker sixty (60) days in advance of the proposed date of withdrawal.

4.3 Interconnection Testing

4.3.1 Testing Principles

- 4.3.1.1 The purpose of Interconnection Testing is to provide reassurance that the Interconnection Provider and the Interconnection Seeker's Network can properly exchange optical fiber traffic or bandwidth traffic and that Interconnection of these two Networks will not adversely affect the existing Services provided by each Party to their respective customers.
- 4.3.1.2 Interconnection between the Parties' Networks shall be carried out, and provision of Services under this agreement shall be provided only after the satisfactory completion of Interconnection Testing and only after the Parties are mutually satisfied with the Interconnection Testing results. Interconnection testing shall be done free of charge.

- 4.3.1.3 Prior to conducting Interconnection Testing, the Party requesting Interconnection shall fully test its Network to ensure that it conforms to the Interface Specifications that conform to the other Party's network (These specifications should meet technically acceptable standards, conform to international best practice and the specifications of the ITU). Any defects in hardware or software of the Requesting Party's Network must be corrected before the commencement of Interconnection Testing.
- 4.3.1.4 Interconnection Testing shall be carried out in accordance with an agreed testing manual of both the Interconnection Seeker and the Interconnection Provider. All testing shall be completed prior to the final establishment or implementation of any of the following:
- 4.3.1.4.1 Initial Interconnection;
 - 4.3.1.4.2 A Network Alteration;
 - 4.3.1.4.3 Reinstatement of a Service that has been suspended; or
 - 4.3.1.4.4 Installation of new software or updated existing software that affects or is likely to affect the Party's Interconnection arrangements, irrespective of whether such installation is considered a National Alteration, or part of a Planned Upgrade Program or otherwise.

4.4 Testing Schedule

- 4.4.1 The Requesting Interconnection Seeker shall book the required test date(s) and duration (collectively, "test period") and submit a test order form (a form agreed and developed by both Parties that details the test) to the Interconnection Provider least ten (10) Days prior to the requested testing date. The test order form shall contain the necessary details for the testing setup, including the proposed test schedule and the requested test date(s).
- 4.4.2 Interconnection Provider shall advise the Requesting Interconnection Seeker of the test date in writing within two (2) Business Days of receipt of the test order form. If Interconnection Provider is not able to perform the testing on the requested test dates, Interconnection Provider shall propose an alternative test schedule with the response and negotiate in good faith with the Requesting Interconnection Seeker to arrange an alternative schedule.

- 4.4.3 The requested test period is subject to mutual understanding by Interconnection Provider and the Interconnection Seeker. Both Parties shall act in good faith and make reasonable efforts to complete all test items within the estimated test period.
- 4.4.4 Any request by the Requesting Interconnection Seeker to extend the agreed test period is subject to mutual understanding by both Parties. The Requesting Interconnection Seeker shall make its request for extension within a reasonable time period prior to the end of the test period.
- 4.4.5 Interconnection Provider shall not be liable to the Requesting Interconnection Seeker for any delay in completing all test items, unless such delay is directly attributable to Interconnection Provider's negligence or willful misconduct.

4.5 Daily Time Table of Interconnection Testing

All Interconnection Testing shall be carried out during normal business hours or as agreed between Interconnection Provider and the Interconnection Seeker. Any Interconnecting Testing that affects traffic should be scheduled so as to minimize service disruption. Testing of the Interconnect Link(s) will be kept to a minimum and will be avoided during the busy hour periods

4.6 Testing Results

- 4.6.1 Interconnecting the Requesting Interconnection Seeker's Network to Interconnection Provider's designated POI shall be carried out only upon satisfactory completion of the Interconnection Testing and only after the Interconnection Provider is satisfied with the Interconnection Testing results.
- 4.6.2 In the event that Interconnection Provider or the Interconnection Seeker identifies one or more Critical Problems, the Party causing the Critical Problem shall endeavor to resolve any such problems during the testing period. Otherwise, after the end of the first testing period, the Party causing the Critical Problem(s) shall resolve the Critical Problem(s) and subsequently demonstrate to the satisfaction of the other Party their resolution through completion of a new round of testing.

4.7 Service Testing Cancellation

- 4.7.1 The Requesting Interconnection Seeker shall adhere to the test period as mutually agreed.
- 4.7.2 Any request for cancellation of Interconnection Testing shall be made in writing by the Party seeking to cancel the test, with reasonable notice to the other Party.
- 4.7.3 In the event that Interconnection testing is completed or is terminated by one Party before the last day of the test period, the other Party may recover its reasonable costs related to the cancelled test from the Party cancelling the test.

5 PART V: ANNEX I:

5.1 Terms and Definitions

“access” means the making available of telecommunications facilities and equipment, or services or both facilities and services by one Service Provider to another Service Provider, for the purpose of providing interconnection, and includes access to network elements and associated facilities, access to physical infrastructure including buildings, ducts and masts, and access to network software systems including operational support systems;

“co-location” means accommodation of two or more switches, transmission equipment and antennas or other electronic communications equipment, or power generation equipment in, or on a single building tower or other structure for the purposes of interconnecting communications networks or for other telecommunications purposes;

“Dominant Service Provider” means a Service Provider designated to have significant market power or otherwise to be dominant in one or more telecommunications service markets pursuant to the Telecom Law

“Enhanced Service” A service offered over common carrier transmission facilities employing computer processing applications to handle the format, content, code, protocol, or similar aspects of the customer's transmitted information; provide the customer with additional, different, or restructured information; or involve customer interaction with stored information

“Essential Facility” means a telecommunication facility owned by a Service Provider (including an Interconnection Provider) which cannot feasibly, whether economically or technically be substituted and is declared to be an essential facility by the Authority;

“IGO” International Gateway Operator – a service provider licensed by the Commission to provide in-bound and out-bound facilities for international telecommunications traffic

“Interconnection” means the physical and logical linking of telecommunications networks used by the same or a different Service Provider in order to allow the users of one Service Provider to communicate with users of the same or another Service Provider, or to access the facilities and/or services of another Service Provider. For the purposes of the Telecom Law and Regulatory Procedures, the term interconnection includes ‘access’, meaning the making available of

telecommunications facilities or services by one Service Provider to another for the purpose of providing telecommunications services;

“Interconnection Dispute” means a dispute between two or more parties who are Service Providers, regarding the reasonableness of a request for interconnection under these Regulatory Procedures.

“ONA” Open Network Architecture – A network architecture that is provided within an open system concept

“ONP” Open Network Provision - A set of technical interfaces and usage conditions adopted by the EU for the interconnection of networks based on the open systems concept.

“Open Systems” A portable, scalable and interoperable system that is based on publicly available standards for subsystem interaction. It facilitates multi-operator and multi-technology integration

“Service Provider” means a person or entity under permit or license by the ATRA that provides a telecommunications service to the public or that owns or operates a telecommunications network used to provide telecommunications services to the public;

“Significant Market Power” means a position of economic strength, acting either individually or jointly with others, permitting a Service Provider to act to an appreciable extent independently of customers or competitors, or otherwise constituting a position of dominance in one or more identified telecommunications service markets; and

"Telecommunications Facility" means any facility, apparatus or other thing that is used or is capable of being used for telecommunications or for any operation directly connected with telecommunications.

“Operator Access Point” The physical interface within the Operator’s System from which the Interconnection services can be obtained.

“Interconnected Operator” An operator wishing to be or being interconnected to “The Operator” transmission paths between two locations.

“Party(ies)” “The operator”, offering interconnection services and the “Interconnected Operator” buying interconnection services under this agreement.

“Point of Interconnection (POI)” The physical point on the Interconnection Link where the telecommunications network of “The Operator” and the “Interconnected Operator’s” System are interconnected. The POI is the boundary between “The Operator” and the “Interconnected Operator domains of responsibility”

“Reference Interconnect Offer (RIO)” The present offer for interconnection Services

“System” All equipment and software which, an Operator uses to provide his telecommunications services.

“SLA” Service Level Agreement

6 PART VI: ANNEX II

6.1 Optical Fiber Infeasible Right of Use (IRU) Price Cap (Cost in USD)

INDEFEASIBLE RIGHT OF USE LEASING OPTIONS

Route	For Use (yrs)	Pricing (USD)	Maint. Cost (USD)
*Normal	10 yrs	750	75
Normal	5 yrs	1125	113
**Low Residents/ Developing	10 yrs	500	50
Low Residents/ Developing	5 yrs	375	40
***Metro	10 yrs	5000	750
Metro	5 yrs	3750	561
****Sensitive	10 yrs	5000	750
Sensitive	5 yrs	3750	561

- **Prices are computed in USD**
- **Prices are per km per core**
- **For all routes, 5 years option are 75% of 10 years cost**
- **Maintenance Cost for Normal and Low Residents/Developing routes is 10% of IRU Cost yearly**

- **Maintenance Cost for Sensitive and Metro routes is 15% of IRU Cost yearly**

Route Classification

NORMAL ROUTES (Example, routes linking the following Provinces/Cities)

- Kabul -> Charikar -> Baghlan -> Samangan -> Mazare Sharif -> Sheberghan -> Maimana -> Herat
- Herat -> FarahRood -> Gereshk -> Maiwand -> Kandahar
- Kandahar -> Zabul -> Ghazni -> Maidan Shahr -> Kabul
- Kabul -> Jalalabad
- Baghlan -> Kunduz -> Takhar -> Badakhshan

LOW RESIDENTS / DEVELOPING ROUTE (Example, routes that are not Critical, Normal, and Low Residents)

- Jalal Abad -> Kunar

METRO ROUTE (Example, routes concentrated within metro areas)

- Kabul

SENSITIVE ROUTE (Example, routes connecting borders that may have critical challenges)

- Jalal Abad -> Torkham Border
- Herat -> Islam Qala Border
- Kunduz -> Shir Khan Border

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7 PART VII: ANNEX III

7.1 Metro Bandwidth Lease (Cost in USD)

MONTHLY OFC METRO BANDWIDTH LEASE OPTION (USD)

Distance (km)	E1	E3	DS3	STM1	STM4	STM16	STM64
0 - 200	2.25	15.6	21.8	51.8	156.8	431.3	1207.5
201 - 600	1.9	13.5	18.8	43.5	130.5	364.5	1001.3
> 600	1.5	11.3	15.8	36.8	109.5	306.8	858.8

- **Distance is calculated in km**
- **Price per capacity and distance is calculated in USD**