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LEGAL SUPPLEMENT — B

GUYANA

No. 8 of 2020

REGULATIONS

Made Under

THE TELECOMMUNICATIONS ACT 2016

(Act No. 18 of 2016)

**IN EXERCISE OF THE POWERS CONFERRED UPON ME BY SECTIONS 80(2) AND 85 OF THE
TELECOMMUNICATIONS ACT 2016, I MAKE THE FOLLOWING REGULATIONS:-**

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PART I**GENERAL PROVISIONS**

- Citation. 1. These Regulations may be cited as the Telecommunications (Pricing) Regulations 2020.
- Interpretation. 2. In these Regulations –
- "cost-oriented pricing" has the meaning provided in regulation 14(2);
- Schedule A "market" means any telecommunications service, or any group of the telecommunications services, set out in Schedule A and either designated under regulation 8(1) or identified by the Commission in accordance with regulation 8(2) or 9;
- "price cap" means the upper boundary set on a telecommunications service using the price cap formula;
- "price cap basket" means a basket, or grouping, of telecommunications services which the Commission determines are to be regulated according to the price cap formula;
- Schedule B "price cap formula" means the formula provided for in paragraph IV of Schedule B and to be utilised in implementing a price cap regime;
- "price cap period" means the period during which a price cap regime is in force for any telecommunications service subject to such price cap regime, as provided for in paragraph VIII of Schedule B;
- "price cap regime" means a price regulation regime using price caps and the price cap formula, in accordance with regulations 10(a) and 11 and Schedule B, and in the instances in which the Commission has established price floors pursuant to regulation 13 and Schedule E in connection with a price cap regime, shall include such price floors;
- Schedule E "price cap services" means telecommunications services on Schedule A that are subject to a price cap regime and the price cap formula and that are included in price cap baskets from time to time;
- "price floor" means a price regulation regime in which a service provider is prohibited from charging a price for a

telecommunications service that is less than the price prescribed by the Commission in accordance with regulation 13 and Schedule E;

“price regulation regime” means any regime for price regulation instituted by the Commission under the Act and these Regulations;

Schedule D

"rate of return formula" means the formula provided for in paragraph I of Schedule D and to be utilised in implementing a rate of return regime;

"rate of return regime" means a price regulation regime under which a retail price is set so as to enable a service provider to achieve a particular rate of return, in accordance with regulation 12(b) and Schedule D;

"relevant market" has the meaning provided in regulation 15(a);

Schedule C

"retail-minus formula" means the formula provided for in paragraph II of Schedule C and to be utilised in implementing a retail-minus regime;

"retail-minus regime" means a price regulation regime under which the price for a wholesale telecommunications service is established by reference to a retail price that uses the wholesale telecommunications service as an input, in accordance with regulation 12(a) and Schedule C;

"retail price" means a price charged by a service provider to consumers and other end-users of a public telecommunications service;

"service provider" has the same meaning as in section 2 of the Act and, in accordance with the definition of "operator" in section 2 of the Act, includes any operator that provides any telecommunications service set out in Schedule A;

"wholesale price" means a price charged by a service provider to resellers of a telecommunications service, or to users who use the telecommunications service as an input to the provision of another telecommunications service.

Scope of application.

3. (1) These Regulations shall apply to the wholesale and retail pricing of public telecommunications networks and public telecommunications services.

(2) These Regulations shall not apply to the pricing of interconnection, access, collocation, or the joint use of facilities or utility installations, as those terms are

No. 7 of 2020 defined in section 2 of the Act, and defined and utilised in the Telecommunications (Interconnection and Access) Regulations 2020, the prices for which are governed by Part VI of the Act and those regulations.

General principles governing pricing.

4. (1) Prices for telecommunications services on a wholesale and retail basis, except those regulated by the Commission in accordance with the Act and these Regulations, shall be determined by operators and service providers in accordance with the principles of supply and demand in the market.

(2) Operators and service providers shall provide prices that are fair and reasonable and shall not discriminate unduly among similarly-situated persons, including the operator or service provider itself and any body corporate with which it is affiliated.

(3) The Commission may, in accordance with the Act and these Regulations, institute price regulation regimes in any case where –

- (a) there is only one operator operating a public telecommunications network or service provider providing a public telecommunications service;
- (b) an operator or a service provider is dominant as to a relevant public telecommunications network or public telecommunications service; or
- (c) the Commission detects anti-competitive cross-subsidisation or any other anti-competitive pricing or unfair competition.

(4) In instituting price regulation regimes under subregulation (3)(a) or (b), the Commission shall ensure that such regimes do not have the unintended effect of restricting competition.

(5) The Commission may, where it deems appropriate, require that an operator or service provider effect accounting separation between different portions of its telecommunications networks and facilities and between the telecommunications services set out in Schedule A.

Schedule A

(6) (a) Operators and service providers shall publish the prices, terms and conditions for their public telecommunications networks, public telecommunications services, and facilities -

- (i) in the instance of prices subject to a price regulation regime, in the manner provided for in regulation 15 and
- (ii) in all other instances, in the manner provided for in regulations 6(f) and (g).

(b) The prices published in accordance with paragraph (a) shall,

after such publication, be the lawful prices, terms and conditions for the use of such telecommunications networks, telecommunications services and facilities.

Schedule (7) After consultation with the Commission and in accordance with section 85(2) as applicable in light of the circumstances, the Minister may, by order, amend any Schedule to these Regulations.

(8) Notwithstanding anything in regulation 6 or any other provision of these Regulations, the Commission may, at any time, review any price being charged by a service provider to consumers or any other user to determine whether to implement a price regulation regime pursuant to section 38(3) of the Act and subregulation (3) or to determine whether the price is consistent with a price regulation regime that had previously been imposed by the Commission, and any such review shall be carried out in accordance with the procedures set out in regulation 15.

Savings of existing rates.

5. For purposes of section 38(2) of the Act, the rate being charged by a service provider on the appointed day for any telecommunications service by it shall not be changed after that date except in accordance with the Act and these Regulations.

Notification of price changes and prices for new telecommunications services.

6. No service provider may, within the one-year period after the appointed day, increase, and after such one-year period, change its price for any telecommunications service offered to consumers or to any other user, or charge any price for a new telecommunications service to be offered by it to consumers or to any other user, except in accordance with the following procedures, regardless of whether such telecommunications service is subject to a price regulation regime-

- (a) the service provider shall submit to the Commission a written notification of the proposed price change or the proposed price for a new telecommunications service no later than fourteen days prior to the date on which such service provider proposes to implement such price change or such price for a new telecommunications service;
- (b) the notice required under paragraph (a) shall identify the telecommunications service for which the price change or price for a new telecommunications service is proposed; the date on which the change or price for a new telecommunications service is proposed to take effect; the consumers or other users to which the proposed price change applies or to which the price for the new telecommunications service would apply; the pricing related terms and conditions for such telecommunications service; whether the service provider is already subject to a price regulation regime with regard to the telecommunications service to which the price relates; and in the case of promotional or temporary prices, the period during which the price is proposed to be effective;

- (c) if the service provider is subject to a price regulation regime with regard to the telecommunications service for which a price is proposed, the service provider must comply with the requirements of such price regulation regime, in addition to the notice requirements of this paragraph;
- (d) the Commission shall review notifications submitted under paragraph (a) and, within the fourteen days following the receipt of any such notification, shall notify the service provider in writing if it intends to subject the proposed price to review pursuant to the instances in which a price regulation regime may be implemented under section 38(3) of the Act and regulation 4(3), and where the Commission determines to subject the proposed price to review, it shall carry out such review in accordance with the procedures set out in regulation 15;
- (e) in the absence of a written notification by the Commission within the fourteen days provided for under paragraph (d), the proposed price change or the proposed price for a new telecommunications service shall be deemed to be approved by the Commission;
- (f) the service provider shall give notice to the public, or to such other users that will be impacted by the price change or the price for a new telecommunications service, such notice to identify –
 - (i) the telecommunications service for which the price change or the price for a new telecommunications service has been approved;
 - (ii) in the case of price changes, the price then in effect and the price to which it will be changed;
 - (iii) the date on which the change or the price for a new telecommunications service will take effect, which date shall be no earlier than fourteen days from the date of the last notice given under subparagraph (g);
 - (iv) the terms and conditions of the telecommunications service;
 - (v) in the case of a promotional or temporary price, the period during which the price is approved to be effective; and

- (vi) any other information required by the Commission.
- (g) the notice required by paragraph (f) shall be given by –
 - (i) a posting on the website of the service provider;
 - (ii) a mailing to each of the post-paid consumers of the service provider, or where the price change is for a wholesale telecommunications service, to each user of such telecommunications service;
 - (iii) the publication in two daily editions of a newspaper in nationwide circulation in Guyana; and
 - (iv) any other manner required by the Commission.

Public information and consultation sessions.

7. (1) At least once in every calendar year, the Commission shall hold a public education and consultation meeting, at which it shall -

- (a) provide information on the instances in which it has established retail and wholesale prices during the preceding year pursuant to section 38(3) of the Act and regulation 4(3), including the conduct or circumstances that warranted each such price regulation regime, and the mechanisms and calculations used to establish such prices;
- (b) invite operators and services providers to make presentations, for the purpose of educating the public about the costs involved in providing their telecommunications services; and
- (c) afford an opportunity to members of the public to ask questions related to the regulation of prices for telecommunications services by the Commission.

(2) The public consultation provided for in subregulation (1) shall not operate to delay the Commission's establishment of price regulation regimes in accordance with the Act, these Regulations or the Telecommunications (Interconnection and Access) Regulations 2020.

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PART II

MARKETS FOR TELECOMMUNICATIONS SERVICES

Definition of markets.

Schedule A

8. (1) Pending the determination by the Commission provided for in subregulation (2), the markets which shall be used for the purpose of price regulation regimes shall be those telecommunications services, or any grouping of those telecommunications services, set out in Schedule A, as the same may be applicable to the

telecommunications services of any service provider subject to regulation under section 38(3) of the Act and regulation 4(3).

(2) Within one year after the appointed day for Part V of the Act, the Commission shall define the markets which shall be used for the purpose of price regulation regimes, in accordance with the following procedure-

Schedule A

- (a) the markets for telecommunications services shall be formed from among those telecommunications services set out in Schedule A;
- (b) the Commission shall –
 - (i) identify any telecommunication service that should form a market, and groups of telecommunications services that should be combined into markets, for the purpose of price regulation, based on economic principles, international best practices and the extent of telecommunications development and liberalisation in Guyana and applying such tests and analyses as the Commission considers appropriate;
 - (ii) determine the appropriate scope of the markets, both in terms of products and services offered to consumers and other users and any geographical limits that the Commission may deem appropriate;
 - (iii) publish details of the proposed markets on its website, conduct a consultation on such market definitions with interested parties, and take into account the representations made in that consultation; and
 - (iv) publish its determination of the market definitions on its website, in the *Gazette*, and in at least one newspaper of nationwide circulation in Guyana, and such determination shall take effect fourteen days after the last of such publications;
- (c) Market definitions determined by the Commission shall include, at a minimum -
 - (i) a description of the telecommunications services comprised in the markets, adequate to differentiate each such telecommunications service from other similar telecommunications services not included in the relevant definition;
 - (ii) a statement of the geographical limits of each such

defined market; and

- (iii) identification of the service providers providing telecommunications services in each such defined market.

Review of defined markets.

9. The Commission shall review the markets defined in accordance with regulation 8(2) -

- (a) periodically, as determined by the Commission, but not less than once every three years;
- (b) in response to any material change in market conditions; and
- (c) in its discretion, in response to a written request from a service provider to conduct such a review.

PART III

PRICE REGULATION REGIMES FOR TELECOMMUNICATIONS SERVICES

Price regulation regimes.

10. The Commission shall -

- (a) except as provided in regulation 12, implement a price cap regime in any instance in which it determines that price regulation should be instituted pursuant to section 38(3)(a) or (b) of the Act and regulations 4(3)(a) or (b);
- (b) in any instance in which it determines that price regulation should be instituted pursuant to section 38(3)(c) of the Act and regulation 4(3)(c), implement the price regulation regime provided for in these Regulations that it determines to be best suited to eliminate the relevant anti-competitive cross-subsidisation or other anti-competitive pricing or unfair competition, in addition to taking any other measures to address anti-competitive or unfair conduct authorised in the Act or the regulations.

Price cap regimes.
Schedule B

11. The Commission shall implement price cap regimes, for the price cap services to be regulated by any such regime, in accordance with Schedule B.

Retail minus and rate of return regimes.

12. Solely in instances in which the Commission determines that -

- (a) with regard to establishing prices pursuant to regulation 10(a), it is not possible, by implementing a price cap regime, to establish prices that are fair and reasonable and do not unduly discriminate among similarly-situated persons; or

- (b) with regard to establishing prices pursuant to regulation 10(b), it would be appropriate,

the Commission may -

Schedule C

- (i) establish wholesale prices on the basis of a retail-minus regime in accordance with Schedule C; and

Schedule D

- (ii) establish retail prices on the basis of a rate of return regime in accordance with Schedule D.

Price floors.

13. The Commission may implement price floors in any instance provided for in regulation 10 that it deems appropriate, in accordance with the principles set out in Schedule E.

Schedule E

Cost-oriented pricing.

14. (1) Subject to the pricing methodologies provided for in the Schedules and the other provisions of these Regulations, the Commission may, in any instance in which it establishes a price regulation regime, develop, prescribe and apply the methodologies, which may include benchmarking and network modeling, that operators and service providers shall apply to determine and demonstrate that they are providing specified telecommunications services on a cost-oriented basis.

Schedules

(2) Cost-oriented pricing determined and demonstrated under these Regulations shall be based on charges equal to the long-run incremental cost of an efficient operator or service provider, as the case may be, plus, if applicable, an appropriate portion of shared and common costs, for the relevant telecommunications services.

PART IV

IMPLEMENTATION AND REVIEW OF PRICE REGULATION REGIMES

Implementation of price regulation regimes.

15. Where the Commission determines to implement a price regulation regime pursuant to section 38(3) of the Act and regulation 4(3)-

- (a) pursuant to regulation 8(1) or (2), whichever is applicable at the relevant time, the Commission shall identify the markets in which it proposes to implement the price regulation regime (the "relevant markets"), the telecommunications services included in the relevant market, and all service providers providing such telecommunications services;
- (b) the Commission shall publish a notice in two editions of a newspaper of nationwide circulation in Guyana, advising that it is introducing a price regulation regime; identifying the type of price regulation regime, the relevant markets and telecommunications services within them, the service providers that will be subject to the price regulation

regime, and the grounds and proposed terms thereof; and stating the period during which such service providers and other interested persons may submit written comments to the Commission on the intended price regulation regime, which period shall be not less than twenty-eight days and not more than forty-five days from the later of -

- (i) the date of the last publication of the notice required under this paragraph; and
 - (ii) the date on which the last written notice is sent to a service provider under paragraph (c);
- (c) contemporaneous with the publication of the notices under paragraph (b), the Commission shall send written notice to the service providers that will be subject to the price regulation regime, containing the same information required for the notices under paragraph (b);
- (d) any service provider likely to be affected by the proposed price regulation regime, the Agency and other interested persons may submit written representations, objections or views to the Commission on any matter related to the proposed price regulation regime within the time period established in the notices given pursuant to paragraphs (b) and (c);
- (e) the Commission may request in writing from any service provider or any other person likely to be affected by the proposed price regulation regime, and from the Agency, any documents and other information which it reasonably requires for the implementation of the price regulation regime, and such service provider, other affected person and the Agency shall provide such documents and other information within twenty-one days of its receipt of the Commission's written request to do so;
- (f) copies of written representations, objections and views submitted to the Commission pursuant to paragraph (d) –
- (i) shall be available from the Commission to any service provider or other person, by posting on the Commission's website and upon written request and the payment, in cash or other immediately available funds, of the administrative costs for photocopying such representations, objections and views; and
 - (ii) shall be sent by the Commission to the Agency free of charge;
- (g) within thirty days following the end of the comment period provided for under paragraph (b), the Commission shall hold a public hearing at which the service providers to be subject to the price regulation

regime, and any other person likely to be affected by it, may present their views on the proposed regime and the Commission shall render a decision thereon within forty-five days after the public hearing;

Schedule B

- (h) in implementing the price regulation regime, the Commission shall take into account the written representations, objections and views made in accordance with paragraph (d), which are duly made and not withdrawn; any information provided in response to a request in accordance with paragraph (e); and any additional such representations, objections and views presented at the hearing provided for in paragraph (g);
- (i) where the price regulation regime to be implemented is a price cap regime under regulation 11 and Schedule B, the Commission shall determine the parameters of such price cap regime, including -
 - (i) the price cap services, and the service providers of such services, that shall be subject to the price cap regime;
 - (ii) the composition of the price cap baskets, and where appropriate sub-baskets, for all price cap services to be subjected to the price cap regime and the weightings for each price cap service in a basket;
 - (iii) the initial prices of the price cap services within each price cap basket, which may take into account the need to adjust prices in stages during a transition period when such prices will be rebalanced;
 - (iv) the values to be used in applying the price cap formula to determine the maximum allowable average price level of the price cap baskets, including initial values and the means and frequency of calculating the X, Z and Q factors;
 - (v) the instances in which, and the conditions under which, any price floor is to be applied to any price cap service;
 - (vi) in accordance with paragraph VIII of Schedule B, the price cap period during which the price cap regime will be in effect for each price cap basket;
 - (vii) the date on which the price cap regime will go into effect;
 - (viii) the requirements with which the service provider must comply pursuant to paragraph IX of Schedule B;
 - (ix) the procedures that will be used to determine compliance with the price cap regime, in accordance with paragraph VI of

Schedule B;

- (x) in instances in which the Commission concludes it is appropriate, a mechanism to allow the relevant service providers to carry-over, on an annual basis, price changes that were permitted, but not made, to the price of any price cap service, in accordance with paragraph VII of Schedule B; and
- (xi) any other provisions or requirements of the price cap regime, as deemed appropriate by the Commission;
- (j) the duration of any price regulation regime, other than the duration of a price cap regime as determined pursuant to paragraph (i)(vi), shall be determined by the Commission;
- (k) the Commission shall implement a price regulation regimes by order directed to the relevant service provider;
- (l) within the seven days following the issuance of any order under paragraph (k), the Commission shall -
 - (i) publish the final price regulation regime in the *Gazette*, and such price regulation regime shall take effect on the date provided for in such publication; and
 - (ii) post the final price regulations regime on its website, and the service provider subject to such regime shall publish the prices subject to the regime by -
 - (A) a posting on its website;
 - (B) a mailing to each of the post-paid consumers of the service provider, or where the price change is for a wholesale telecommunications service, to each user of such telecommunications service;
 - (C) the publication in two daily editions of a newspaper in nationwide circulation in Guyana; and
 - (D) any other manner required by the Commission.

Review of price
regulation regimes.

- 16.** (1) Where -
- (a) a service provider subject to a price regulation regime applies to the Commission in writing for a review of such regime at any time after it has been in effect for longer than six months; or

- (b) the Commission, at any time, considers it necessary due to changes in market conditions or new information,

the Commission may review such price regulation regime, and any such review shall be governed *mutatis mutandis* by the procedures provided for in regulation 15.

(2) Any price regulation regime that is subject to review under subregulation (1) shall remain in effect during such review and until such time as it may be changed by the effectiveness of an order issued under this Regulation and regulation 15(k).

Changes to prices of price cap services.

17. (1) Subject to regulation 6, the terms of the applicable price cap regime, and this Regulation, a service provider subject to a price cap regime may freely adjust the prices for the price cap services in the price cap basket.

(2) The Commission shall review any proposed price change in a price cap service notified to it by a service provider under regulation 6 and the terms of the applicable price cap regime, and if it determines there is reasonable cause, it may notify the service provider in writing, within the thirty days following receipt of such notification, that it is suspending the effectiveness of such change pending a formal investigation of whether it is consistent with the price cap regime.

(3) If, within the thirty-day period provided for in subregulation (2), the Commission does not direct a suspension of a proposed price change, the service provider shall carry out the public notification procedure required under regulation 6, and the price change shall take effect as provided therein.

Compliance with price regulation regimes.

18. (1) A service provider subject to a price regulation regime implemented by the Commission pursuant to these Regulations shall at all times ensure that the prices it charges for the subject telecommunications services conform to such price regulation regime and shall comply with all requirements of the Commission for reporting and the provision of information regarding such regime.

(2) If the Commission determines that a service provider has in any manner failed to comply with a price regulation regime to which it is subject, the Commission may, by written notice to such service provider, direct it to make any changes to its prices necessary to comply with the price regulation regime, and the service provider shall effect such changes within the time set out in the Commission's notice.

PART V

ENFORCEMENT, OFFENCES AND PENALTIES

Issuance of directions.

19. The Commission may issue such written directions to any operator or service provider as it deems necessary for the purpose of compelling compliance with these Regulations, and the operator or service provider shall promptly comply with any such direction.

Inspection.

20. The Commission may take such steps as it considers appropriate to verify any information provided pursuant to these Regulations, including exercising its entry, inspection and seizure powers under the Act.

Penalty for violations of Regulations.

21. Without prejudice to any other applicable remedies under the Act, a person who breaches or otherwise fails to comply with any provision of these Regulations, a price regulation regime implemented by the Commission, or any request, direction or order of the Commission issued under these Regulations commits an offence and -

- (a) is liable on summary conviction to a fine of not less than two million dollars and not more than three million dollars;
- (b) if the offence of which a person is convicted is continued by such person after conviction, the person commits a further offence and is liable to a fine of five hundred thousand dollars for every day on which the offence is continued.

SCHEDULE A

rr. 2, 4 and 8

MARKETS FOR TELECOMMUNICATIONS SERVICES

A market may be identified by the Commission, in the manner provided for in regulations 8 and 9, from any telecommunications service or any group of telecommunications services, as follows -

1. Retail services**(a) Fixed public telecommunications services**

residential narrowband (voice) access
residential broadband access
business narrowband (voice) access
business broadband access
public payphones
local and national long distance calls for residential customers
local and national long distance calls for business customers
local and long distance calls to mobile subscribers
international long distance calls for residential customers
international long distance calls for business customers
narrow band (dial up) Internet for residential customers
narrow band (dial up) Internet for business customers
broadband Internet for residential customers
broadband Internet for business customers
leased lines
data transmission

(b) Mobile public telecommunications services

voice calls
messaging services
narrowband Internet
broadband Internet
roaming

(2) Wholesale services**(a) Fixed public telecommunications services**

call origination
call termination
call transit
unbundled local loops (narrow band)
unbundled local loops (broadband)
domestic leased line capacity and termination (wireline or wireless)

international leased line capacity and termination (wireline or wireless)
IP transit

(b) **Mobile public telecommunications services**

access and call origination
domestic and international call termination
international roaming
messaging
transmission and distribution

SCHEDULE B

rr. 2, 11 and 15

PRICE CAP REGIMES**I. Establishment of price cap regimes**

The Commission shall establish price caps for each price cap basket defined in accordance with this Schedule, to allow annual average price changes in each such price cap basket less than or equal to the difference between the price cap index (PCI) for that year adopted in accordance with this Schedule, and adjusting efficiency factors determined by the Commission in accordance with this Schedule.

II. Determination of price cap baskets

In establishing price cap baskets, the Commission shall take the following factors into consideration-

- (a) The degree of flexibility that the service provider will have to change prices in the price cap basket;
- (b) Homogeneity and the degree of suitability of the price cap services in the price cap basket;
- (c) The need to define sub-baskets where appropriate;
- (d) The need to prevent anti-competitive pricing behaviour within the price cap regime by setting sub-caps, and as appropriate price floors, for certain price cap services within a price cap basket or any other type of restriction where appropriate;
- (e) The level of competition that exists in the provision of the price cap services to be regulated under the price cap regime; and
- (f) Design simplicity and practicability.

III. Determination of initial prices

(a) In determining the initial prices of the price cap services in each price cap basket, the Commission may take into account the extent to which the service provider is earning a reasonable, or unreasonably high, rate of return and no less than its weighted average cost of capital in the relevant price cap basket based on revenues generated from price cap services in such basket.

(b) If the service provider's revenues are not sufficient or it is earning unreasonably high profits, the Commission may determine the extent to which adjustments should be made to the price cap regime to enable the service provider to adjust prices within the terms of the price cap regime, such that it achieves a reasonable return, or determine the extent to which existing prices should be adjusted immediately to address any unreasonably high profits.

(c) In setting the initial prices for price cap services, the Commission may take into account a transition period required to rebalance prices and during which prices will be adjusted over a determined period of time to reach a target level at the end of the transition period.

IV. Price cap formula

The Commission shall establish a price cap regime for price cap services based on the following price cap formula, to measure the maximum allowable average price for all price cap baskets, effective for the price cap periods set out in paragraph VIII-

$$PCI_t = PCI_{t-1}(1 + IF - X \pm Z \pm Q)$$

where -

- PCI_t = the maximum allowable average price level for all price cap baskets relevant to the service provider whose prices are to be regulated, at the beginning of price cap period t.
- PCI_{t-1} = the maximum allowable average price level of all price cap baskets relevant to the service provider whose prices are to be regulated, at the beginning of the previous price cap period. The Commission shall set the value of the price cap index in the base year at 100.
- IF = the inflation factor which, in the discretion of the Commission, may be the Retail Price Index, the Consumer Price Index, the Producer Price Index or any other index that the Commission may consider appropriate for measuring the change in the input cost to the service provider in the circumstances.
- X_t = the "X factor," which is the expected productivity or efficiency factor for the price cap period t, to be determined by the Commission using financial models, productivity models and/or benchmarks as provided for in paragraph V, and which shall be –
- (a) the basis for the maximum rate at which prices within each relevant price cap basket are permitted to change during the relevant price cap period; and
 - (b) an estimate of the service provider's expected productivity increase over the price cap period, which shall be calculated in a manner that ensures that the service provider obtains a reasonable rate of return on the provision of the price cap services included in the price cap basket.
- Z_t = "Z factor," which represents exogenous positive or negative changes in costs to the service provider that are not captured by changes in conventional inputs (such as labor, capital, and raw materials) and that are beyond the service provider's control for the price cap period t, including changes in tax rates, regulatory fees and other government surcharges but only to the extent that any of such taxes, fees and surcharges is actually imposed upon the relevant service provider.

Q_t = “Q factor,” which is the quality of service factor that shall apply to the price cap basket and which shall be consistent with any quality of service obligations to which the service provider is subject for the price cap period t.

V. Determining the X factor

The Commission may use one or a combination of the following methods to determine the X factor-

- (a) financial models, which calculate the price changes needed to provide the service provider with a reasonable rate of return over the control period;
- (b) productivity models, which calculate the efficiency improvements made over recent years, and may be used for future price controls;
- (c) international benchmarks, where X factors in comparable countries are used as a basis for determining the productivity factor for Guyana.

VI. Assessing Compliance

- (a) The Commission shall use the following actual price index (API) formula to monitor compliance for each price cap basket. The API for any given price cap basket "k" shall be-

$$API_t^k = API_{t-1}^k \times \left[1 + \sum_{i=1}^n \left[\frac{p_{i,t}^k - p_{i,t-1}^k}{p_{i,t-1}^k} \times \frac{r_{i,t-1}^k}{R_{t-1}^k} \right] \right]$$

Where

API_t^k = the actual price index or actual average prices charged or to be charged by the operator or service provider subject to the price cap regime, for basket k after the proposed price change

API_{t-1}^k = the actual price index for basket k based on existing prices. The Commission shall set the value of the actual price index in the base year at 100.

$p_{i,t}^k$ = proposed price of price cap service i in price cap basket k, in price cap period t

$p_{i,t-1}^k$ = existing price of price cap service i in price cap basket k, during price cap period t-1

$r_{i,t-1}^k$ = revenue generated by price cap service i in price cap basket k, based on existing prices during period t-1

R_{t-1}^k = total revenue from all price cap services in price cap basket k, based on existing prices during period t-1

n = the number of price cap services in basket k

(b) An operator or service provider subject to a price cap regime shall be considered to be compliant with such regime with respect to basket k if-

$$PCI_t \geq API_t^k$$

VII. Carryover headroom

(a) The Commission may, where it, in its sole discretion, considers it appropriate, allow an operator or service provider subject to a price cap regime to implement a price change that exceeds the permitted increase for a given year, where such increase is warranted because the operator or service provider opted not to implement an increase in a previous year.

(b) An operator or service provider must request consideration under subparagraph (a) in writing, and the Commission may make its approval (if any) subject to such reasonable conditions as it considers appropriate.

VIII. Duration of price cap regimes

Subject to regulation 16, the price cap period for price cap regimes established by the Commission shall be –

- (a) three years, in the case of price cap regimes implemented pursuant to section 38(3)(a) or (b) of the Act and regulations 4(3)(a) or (b), unless the Commission determines that a different price cap period is necessary to ensure stability and accommodate changing conditions in the market for the relevant price cap services; and
- (b) in the case of price cap regimes implemented under section 38(3)(c) and paragraph 4(3)(c), for such period that the Commission determines is necessary to ensure that the anti-competitive cross-subsidisation or other anti-competitive or unfair competition has definitively ceased.

IX. Administration of price cap regimes

In connection with the implementation of a price cap regime, the Commission shall establish such requirements as it deems appropriate to ensure the effective administration of the price cap regime in a fair, efficient, transparent and non-discriminatory manner, including –

- (a) requirements in addition to those set out in these Regulations, for the service provider to notify the Commission and users of changes in the prices subject to the price cap regime;

- (b) requirements for the service provider to make periodic submissions of information to the Commission, for the purpose of assessing the service provider's compliance with the price cap regime;
- (c) any limitations on promotional offers for the price cap services subject to the price cap regime;
and
- (d) requirements for the service provider to submit any data required by the Commission to assess the effectiveness of the price cap regime.

SCHEDULE C

rr. 2 and 12

RETAIL-MINUS REGIMES**I. Application of retail-minus regimes**

Subject to regulation 12, the Commission may apply a retail-minus regime to a single set or a combination of telecommunications services, depending upon the extent to which -

- (a) the costs of telecommunications services in a combination are similar;
- (b) the operator or service provider could price squeeze or behave in an anti-competitive manner while complying with the retail-minus regime; or
- (c) there is competition in the relevant retail service market between the operator or service provider and its competitors to which it is providing the relevant wholesale service.

II. Retail-minus formula

The Commission shall establish any retail-minus regime based on the following retail-minus formula, effective for such period as the Commission may determine -

$$P_w = P_r - c$$

where

$$P_w = \text{Retail-minus derived wholesale price}$$

$$P_r = \text{Retail price}$$

$$c = \begin{array}{l} \text{the incremental cost of providing the retail service minus} \\ \text{the incremental cost of providing the wholesale service} \end{array}$$

III. Selection of retail price

In selecting the retail price for use in the retail-minus formula, the Commission -

- (a) may use promotional, special or discounted retail prices, if such prices exist within the market for more than half of the period under review, but shall otherwise use the average price of the retail service over the period under review;
- (b) may use a retail price even if it is not for a pure resale product of the wholesale telecommunications service, but in such circumstances shall subtract any exorbitant profits from the retail price before it is used in the retail-minus formula;

- (c) shall, in determining the retail costs to be included in the retail-minus formula, seek to use costs that are most reflective of efficient costs; and
- (d) shall use a retail price that would ensure that the service provider receives a rate of return no less than its weighted average cost of capital.

IV. Determining the "minus"

(1) In determining the incremental cost of providing the retail service, the Commission may exclude those costs associated with -

- (a) retail product management and product development;
- (b) sales, marketing and advertising;
- (c) customer care costs;
- (d) number services;
- (e) general support or any other overheads that could be attributed to retail services; and
- (f) billing and collection costs (including bad debt).

(2) In determining the incremental cost of providing the wholesale service, the Commission may include those costs associated with wholesale billing or any other administrative cost and investment costs incurred in providing the wholesale service, and shall determine the extent to which such costs should be recovered from the service provider's wholesale and retail customers to the extent to which retail customers would benefit from competition for the relevant telecommunications service.

(3) The Commission shall, in its discretion, determine the manner in which the term "c" in the retail-minus formula is to be expressed based upon the underlying cost structures of the telecommunications services under consideration, such that there is minimum potential for anti-competitive behaviour while complying with the retail-minus regime.

SCHEDULE D

rr. 2 and 12

RATE OF RETURN REGIMES**I. Rate of return formula**

Whenever the Commission determines that the application of a rate of return regime is required pursuant to regulation 12(b), it shall implement such regime on the basis of the following rate of return formula-

$$R = B \times r + E + d + T$$

where

- R = the revenue requirement
- B = the rate base or the amount of capital or assets the service provider must use to provide the telecommunications service under consideration
- r = allowed rate of return or the cost the service provider incurs to finance its rate base, including debt and equity, and shall be no less than the service provider's weighted average cost of capital
- E = operating expenses, including the costs of items such as supplies, labour (except for labour used for facilities under construction), and items for resale that are consumed by the service provider's business in a short period of time
- d = annual depreciation expense, that is, the annual accounting charge for wear, tear, and obsolescence of facilities
- T = taxes not counted as operating expenses and not directly charged to consumers, which may or may not include income taxes, depending upon the accounting rules for income taxes applicable to the service provider

II. Calculating the rate base "B"

In calculating the rate base "B" in the rate of return formula, the Commission shall -

- (a) use current cost accounting in determining the cost of facilities in service;

- (b) determine a test period that is representative of the periods over which prices will actually change and that is long enough to represent normal operations; and
- (c) determine whether the facilities in service over the test period should be valued based on an average monthly balance, the end of period balance or the average of beginning-of-year and end-of-year balances.

III. Other calculations

The service provider's operating expenditure ("E"), depreciation ("d"), and weighted average cost of capital shall be determined in accordance with the principles of the Commission's costing methodology.

SCHEDULE E

rr. 2 and 13

PRICE FLOORS

Without prejudice to the Commission's authority to impose price floors in other appropriate instances under regulation 13, including in instances in which it establishes a price cap regime, the Commission shall implement price floors where it detects anti-competitive pricing or acts of unfair competition in any market and it considers that price floors would be an appropriate manner to address distortions that deter effective competition in the relevant market.

Made this 23rd day of October 2020.



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Hon. Brigadier Mark Phillips, M.P.
Prime Minister